Petition

81-751

Docket No.

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In the Supreme Court of the United States

October Term 1981

ROBERT S. MANDELKORN and
EUGENIA MANDELKORN,

Petitioners

V

THOMAS JOSEPH WARD; KEN CONNOR, SR.;
THOMAS JAMES WARD; MARY WARD; MARTY WARD;
LYLE MOISER; LAWRENCE V. CONROY; JOAN CONROY;
JOHN CONROY; MARY CONROY; MARY CAROL WILLIAMS;
ALAN TATE WOOD; DEE ANDERSON; FATHER MARTY O'ROURKE;
TED MORGAN; ROSE MORGAN,

Respondents

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Robert S. Mandelkorn and Eugenia Mandelkorn, Petitioners, pray that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Fourth Circuit, entered in this case on August 10, 1981.

QUESTIONS PRESENTED FOR REVIEW

I. Whether a religious group may be deemed a class for purposes of 42 U.S.C. §1985(c)?

II. Whether the right of interstate travel is a source of congressional power to reach a private conspiracy motivated by class-based religious discrimination under 42 U.S.C. §1985(c)?

PARTIES TO THE PROCEEDING

The names of all parties to the proceeding in the Court of Appeals are set forth in the caption of this case. Respondent Thomas Joseph Ward was named as Appellant in the Court of Appeals and as the sole plaintiff in the District Court. Petitioners and the remaining Respondents were named as Appellees in the Court of Appeals and as defendants in the District Court.

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OPINIONS BELOW

Petitioners seek review of the judgment of the United States Court of Appeals for the Fourth Circuit in the case of Thomas Joseph Ward v. Ken Connor, Sr., et al, ___F.2d____, No. 80-1336 (4th Cir. August 10, 1981), a copy of which is attached hereto as Appendix "A", reversing the judgment of the United States District Court for the Eastern District of Virginia, Norfolk Division, entered on April 18, 1980, in Ward v. Connor, 495 F.Supp. 434 (E.D. Va. 1980), a copy of which is attached hereto as Appendix "C" and "D".

JURISDICTION

The judgment of the Court of Appeals was rendered on August 10, 1981. This Petition follows within ninety (90) days thereof, no petition for a rehearing having been filed. The jurisdiction of

this Court is conferred by 28 U.S.C. §1254(1).

PERTINENT PROVISIONS OF THE UNITED STATES CONSTITUTION AND FEDERAL STATUTES

The First and Thirteenth Amendments to the United States Constitution, U. S. CONST. amend. I and XIII, are involved in this case and are set forth in Appendix "E" hereof.

The following sections of the United States Code are involved herein, and set forth in Appendix "F" hereof. They are:

42 U.S.C. §1985(c) [1976]

28 U.S.C. §1343(1) and 1343(4).

STATEMENT OF CASE

Petitioners are among thirty-three defendants named by Respondent Thomas Joseph Ward, a 28 year-old member of the Unification Church, in a Complaint filed in the United States District Court for

the Eastern District of Virginia, Norfolk Division, on November 27, 1979, in which the Respondent sought injunctive relief and compensatory and punitive damages for injuries allegedly resulting from a private conspiracy by the defendants to deprive the Respondent Ward of his right of freedom of religion and association, and of his right of interstate travel, because of his status as a member of the Unification Church.

In his Complaint the Respondent Ward, a white male, alleges that in November, 1978, he traveled from New York to Virginia to visit his parents, Thomas James Ward and Mary Ward, for Thanksgiving at the home of his sister. Prior to his arrival, the Respondent contends that his parents, and other acting in concert with them, conspired to abduct him for the purpose of coercing him into renouncing his affiliation with the

Unification Church, of which he is a member. In furtherance of the conspiracy he alleges that while en route to an airport in Virginia for a return trip to New York after the visit, he was kidnapped and held captive in Virginia, and later in Pennsylvania, during which time he was subjected to physical and psychological abuse in a vain attempt to "deprogram" him of his religious beliefs. He alleges that he was ultimately able to escape from his captors after thirty-five days of confinement. No state action was alleged.

Of the eight counts in the Respondent Ward's Complaint, Count I alleged that Petitioners and other named defendants engaged in a private conspiracy to deprive the Respondent Ward of the equal protection of the law and of equal privileges and immunities under the law. Federal jurisdiction over this

Count was invoked under 42 U.S.C. §1985(c), by virtue of 28 U.S.C. §§1343(1) and 1343(4), and over the remaining seven counts alleging tort claims under Virginia and Pennsylvania law by virtue of the doctrine of pendent jurisdiction. Alternatively, if the federal conspiracy Count under §1985(c) was dismissed, then diversity jurisdiction was alleged as to the remaining state law claims.

Acting on a Motion to Dismiss under Rule 12(b)(6), Fed.R.Civ.P., filed by Petitioners Robert S. Mandelkorn and Eugenia Mandelkorn on December 31, 1979, the District Court dismissed the Respondent Ward's civil conspiracy claim under §1985(c) and two of the state tort claims, in an Order entered contemporaneously with a Memorandum Opinion on April 18, 1980. Ward v. Connor, 495 F.Supp. 434 (E.D. Va. 1980).

Respondent Ward thereafter, pursuant to 28 U.S.C. §1292(a)(1), timely appealed to the United States Court of Appeals for the Fourth Circuit the District Court's dismissal of his §1985(c) claim. The District Court's dismissal of the two counts involving state tort claims was not appealed.

On August 10, 1981, the Court of Appeals reversed the District Court, holding that Count I of the Respondent's Complaint stated a claim for relief under 42 U.S.C. §1985(c). Ward v. Conner, et al, ___F.2d___, No. 80-1136 (4th Cir. August 10, 1981). Petitioners Robert S. Mandelkorn and Eugenia Mandelkorn then filed a Motion for a Stay of the Mandate of the Court of Appeals, pending Petitioners' petition for a review of the Court of Appeals' judgment on writ of certiorari. On September 17, 1981, the Court of Appeals

entered an Order granting Petitioners Mandelkorn motion for thirty-days, subject to Petitioners' application for a writ of certiorari in this Court. This Order is attached herewith as Appendix "B".

REASONS FOR GRANTING A WRIT

A RELIGIOUS GROUP IS NOT A CLASS FOR PURPOSES OF §1985(c).

In Griffin v. Breckenridge, 403 U.S. 88 (1971), this Court eliminated the requirement that a conspiracy under the statute involve state action, Collins v. Hardyman, 341 U.S. 651 (1951), and held that §1985(c) embraces purely private conspiracies aimed at depriving a citizen of the equal protection of the laws and of the equal privileges and immunities

under the law. The Court, recognizing the constitutional problems inherent in a literal construction of the broad language of the statute, emphasized that although "...the statute was meant to reach private action does not, however, mean that it was intended to apply to all tortious, conspiratorial interferences with the right of others." Griffin v. Breckenridge, supra, 403 U.S. at 101. To give effect to its pronouncement the Court limited the application of §1985 (c):

> The constitutional shoals that would lie in the path of interpreting §1985(3) as a general federal tort law can be avoided by giving full effect to the congressional purpose - by requiring, as an element of the cause of action the kind of invidiously discrimatory motivation stressed by the sponsors of the limiting amendment. * * * The language requiring intent to deprive of equal protection,

> or equal privileges and immunities, means that there must be some racial or perhaps otherwise class-based, invidiously discriminatory animus behind the conspirator's action. Id. at 102.

In Griffin, the Complaint alleged that black citizens traveling on federal, state and local highways were stopped and forced from their automobile and were assaulted and intimidated by a group of whites, who acted in part in the mistaken belief that their victims were civil rights workers. The Complaint having alleged a racially discriminatory motivation behind the conspiracy, the Court found that the requisite animus element was satisfied. "Indeed, the conduct here alleged lies so close to the core of coverage intended by Congress that it is hard to conceive of wholly private conduct that would come within the statute if this does not." Id. at

103.

The Griffin Court then identified two sources of congressional power to impose liability on the perpetrators of the private, racially discriminatory conspiracy alleged there: §2 of the Thirteenth Amendment and the right of interstate travel, which is assertable against private interference and is within the power of Congress to protect by appropriate legislation. Id., at 106.

This Court, however, did not decide, on the facts before it, "whether a conspiracy motivated by invidiously discriminatory intent other than racial bias would be actionable" under §1985(c). Id., at 102, footnote 9. Whether and under what circumstances the coverage of §1985(c) may reach private conspiracies motivated by religious bias is the principal question Petitioners now raise

before this Court.

In reversing the District Court, the Fourth Circuit Court of Appeals held that "...we think it reasonable to conclude that religious discrimination, being akin to invidious racial bias, falls within the ambit of §1985(c), and the plaintiff and the other members of the Unification Church constitute a class which is entitled to invoke the statutory remedy." App. A. pp. A.10-11. The Fourth Circuit then found that Congress had the power to reach the alleged conspiracy under its power to protect the right of interstate travel, which right the Respondent Ward had alleged to have been impaired.

The District Court, however, rejected Respondent Ward's §1985(c) claim largely because it doubted that §1985(c) was ever intended to reach private conspiracies motivated by

religious, rather than racial, prejudice. The District Court's restrictive approach to the class-based animus requirement was based, in part, on its construction of the intent element as requiring discrimination on the basis of "discrete, insular and immutable characteristics," a standard first applied by District Judge Mehrige in Bellamy v. Mason's Stores, Inc., 368 F.Supp. 1025, 1028 (E.D. Va. 1973), aff'd 508 F.2d 504 (4th Cir. 1974) and thereafter by the Third Circuit Court of Appeals in Novotony v. Great American Federal Savings & Loan Association, 584 F.2d 1235 (3rd Cir. 1978), vacated and remanded on other grounds, 442 U.S. 366 (1979), and Carchman v. Korman Corporation, 594 F.2d 354 (3rd Cir. 1979). Petitioners respectfully submit that the District Court, and the Third Circuit, whose decisions are in conflict with

the Fourth Circuit, have applied the proper standard by which to determine the sufficiency of the animus requirement under §1985(c), and pray that the decision of the Court of Appeals be reversed.

In Bellamy, on which the District Court relied, a store employee brought an action under Title VII of the Civil Rights Act of 1964 and under 42 U.S.C. §1985(c), alleging violation of his right of equal protection by virtue of dismissal from his employment because of his membership in the Ku Klux Klan. In rejecting the employee's §1985(c) claim, the district court there found that the requisite animus element was lacking because the employee's membership in the Ku Klux Klan did not

> ...constitute membership in a class otherwise defined by the traditional indicia of suspectness, the type of class required by Griffin's analysis ...a [c]lass possessed of discrete, insular and immutable

> characteristics comparable to those characterizing classes such as race, national origin and sex. Bellamy v. Mason's Stores, Inc., supra, 368 F.Supp. at 1028.[1]

The Third Circuit has similarly limited the classes entitled to protection under §1985(c), and thereby is in conflict with the Fourth Circuit. In Novotny v. Great American Federal Savings & Loan Association, supra, the Third Circuit held that a male employee of the association could maintain an

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[1]The district court in Bellamy also held that interference with the employee's First Amendment rights by a purely private conspiracy was not actionable under §1985(c) in any event because such rights were constitutionally protected only against interference by the state. The Fourth Circuit Court of Appeals affirmed on this basis, Bellamy v. Mason's Stores, Inc., 508 F.2d 504 (4th Cir. 1974), and did not reach the issue of whether the animus requirement had been met. However, in light of its decision in the instant action the Court of Appeals apparently has declined to embrace the "suspect

action under Title VII of the Civil Rights Act of 1964 and under 42 U.S.C. §1985(c), where he was dismissed from employment because of support voiced for female employees at a meeting of the association's board of directors. Although this Court vacated the judgment of the Court of Appeals on the ground that rights created under Title VII may not be asserted within the remedial framework of §1985(c), Great American Federal Savings & Loan Association v. Novotny, 442 U.S. 366 (1979), the rationale of the Third Circuit Court of Appeals for its conclusion that sex-based discrimination might, in a proper case, fall within the ambit of §1985(c) coverage,

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(Footnote No. 1 continued)

class/immutable characteristics" standard to the extent it would exclude religious classes from protection under §1985(c).

is no less compelling:

> The principle that individulas should not be discriminated against on the basis of traits for which they bear no responsibility makes discrimination against individuals on the basis of immutable characteristic repugnant to our system. The fact that a person bears no responsibility for gender, combined with the pervasive discrimination practiced against women, and the emerging rejection of sexual stereotyping as incompatible with our ideals of equality, convince us that whatever the outer boundaries of the concept, an animus directed against women includes the elements of a class-based invidiously discriminatory motivation. Novotny v. Great American Federal Savings & Loan Association, supra, 584 F.2d at 1243.

This analysis was applied again by the Third Circuit Court of Appeals in Carchman v. Korman Corporation, 594 F.2d 354 (3rd Cir. 1979). In Carchman the issue before the Court of Appeals was whether tenant organizers may constitute a class protected by §1985(c) against

class-based animus. The significance of Carchman is perhaps greater than that of Novotny because Carchman involved a class which was beyond the boundary of traditionally defined classes protected under §1985(c). Nevertheless, the analysis in Novotny was determinative:

> Unlike racial or sexual animus against tenant organizers is not based upon "immutable characteristics" for which the members of the class have no responsibility. Nor are we persuaded that tenant organizers have been the victims of historically pervasive discrimination practiced against women.

Tested against the requirement that a §1985(c) claimant be a member of a suspect class or one imbued with immutable characteristics, it is clear that the Respondent Ward's membership in the Unification Church is an insufficient basis for invoking jurisdiction under §1985(c). As pointed out by the District Court in the present action, "...[u]nlike

members of racial minorities, plaintiff here voluntarily joined the Church and, presumably, could leave it if he so desired." App. D, p. A.30; 494 F.Supp. 437.

Petitioners are not unaware of those decisions which support the Fourth Circuit Court of Appeals' holding that a religious class may be protected under §1985(c), App. A, p. A.11, or of the remarks of Senator Edmunds during the congressional debate of the passage of the Civil Rights Act of 1871, in which §1985(c) was originally codified. App. A, p. A.9. But, as stated in Baer v. Baer, supra, 450 F.Supp. at 491, these authorities are "by no means compelling."

Petitioners respectfully contend that the critical distinction between state and private action militates against the expansion of protected

classes under §1985(c) beyond those traditionally characterized as "suspect." Where conspirators are alleged to have acted under color of state law, the additional element of state action may well compel the need for expanding the spectrum of historically disadvantaged or politically weak classes which are to be given access to the federal courts for protection from inadequate state remedies. But, §1985(c) requires no state action, and Petitioners question either the need or the wisdom of expanding the classes of persons to be protected from purely private tortious conduct where, as here, state tort remedies are available to the complainant. Each of the remaining seven counts of Respondent Ward's Complaint consist of state tort claims which could

be litigated in the appropriate state forum, or, where diversity jurisdiction is alleged, in the federal courts. And, expansion of a federal remedy seems particularly unwarranted where the dispute giving rise to litigation is essentially between parent and child.

The restrictive approach to the animus requirement taken by the District Court comports, moreover, with the legislative history of §1985(c), which, enacted as part of the Civil Rights Act of 1871, 17Stat. 13, was popularly known as the Ku Klux Klan Act. Section 1985(c) was intended to enforce the Thirteenth Amendment by providing special federal assistance to southern blacks and their allies "who had been the victims of conspiratorial, racially discriminatory action aimed at depriving them of the basic rights the law secures

to all free men." Griffin v. Breckenridge, supra, 403 U.S. at 105. As was stated in Collins v. Hardyman, supra, 341 U.S. at 661, in which the predecessor of §1985(c) was construed:

> ...[t]he purpose of the Act [of April 20, 1871] was to put the lately freed Negro on equal footing before the law with his former master. The Act apparently deemed that adequate and went no further.

This is not to say that "jurisdiction cannot be found to encompass claims nonexistent in 1871 or 1874, but it cautions us to be hesitant in finding jurisdiction for new claims which do not clearly fit within the terms of the statute." Chapman v. Houston Welfare Rights Organization, 441 U.S. 600, 612 (1979).

This is especially true where it can be reasonably inferred from the Complaint that the parents of the

Respondent Ward acted, if at all, not by their dislike of the Unification Church but out of concern for the well-being of a family member. Thus, there is no invidiously discriminatory animus here. The alleged conspirators' actions were directed against Ward as an individual and not as a member of a particular class. Ward v. Connor, supra, 494 F.Supp. at 438; Styn v. Styn, supra, slip opinion, p. 4; Weiss v. Patrick, 453 F.Supp. 717, 724 (D.R.I. 1978), aff'd 588 F.2d 818 (1st Cir. 1978), cert. denied, 442 U.S. 929 (1979).

For the foregoing reasons, Petitioners respectfully submit that the District Court properly refused to include a religious group among those classes entitled to protection under §1985(c).

II. THE RIGHT OF INTERSTATE TRAVEL IS NOT A SOURCE OF CONGRESSIONAL POWER TO REACH A PRIVATE CONSPIRACY MOTIVATED BY RELIGIOUS DISCRIMINATION

Having concluded that class-based religious discrimination satisfied the intent element of §1985(c), the Court of Appeals then found constitutional authority to reach the alleged private conspriacy under congressional power to protect the right of interstate travel. Petitioners believe that this Court in Griffin identified the right of interstate travel only as a source of congressional authority to impose liability for racially motivated conspiracies.

In dictum, this Court identified the right of interstate travel as a basic right secured to Negroes as free men under the Thirteenth Amendment and to be counted among "those fundamental rights which appertain to the essence of citizenship and the enjoyment or

deprivation of which constitutes the essential distinction between freedom and slavery." Civil Rights Cases, 109 U.S. 3, 22 (1883). This right, as used by the Court, serves not to extend §1985(c) to cover private nonracial conspiracies, but as a definer of the substantive content of "the badges and incidents of slavery," Jones v. Alfred H. Mayer Co., 392 U.S. 409, 440 (1968), which constitute restraints upon "those fundamental rights which are the essence of civil freedom, namely the same right[s] ...as [are] enjoyed by white citizens." Civil Rights Cases, supra, at 109.

The underlying purpose and legislative history of §1985(c) are distorted if the federal courts are to take jurisdiction of the claims of a Catholic, Baptist, Mormon, or, indeed, a devotee of the Reverend Moon, who is stopped on interstate highways by conspirators inspired

by hatred of their victims' religious beliefs. Unlike Griffin, where the right itself pertained to the status of blacks as free men under the Thirteenth Amendment, the right of interstate travel in no way defines the religious class in this case.

Clearly, the aim of this alleged conspiracy was to deprive the Respondent Ward of his rights to freely exercise his religious beliefs, not his right of interstate travel. As the District Court observed:

> The gravamen of the plaintiff's Complaint, however is not deprivation of the right to travel interstate, but rather interference with his First Amendment rights of freedom of religion and association. Such First Amendment rights do not support an interpretation of §1985(c) extending the statute to reach private conduct. App. D, p. A.32;495 F.Supp. at 434.

See Styn v. Styn, Civ. Action No. 79-C3468, slip opinion, p. 6. (N.D. Ill. Feb. 7, 1980), where, despite allegations that the plaintiff was forcibly transported across state lines, the district court there stated that "[t]he gravamen of plaintiff's Complaint is interference with her First Amendment right of freedom of religion, not interference with interstate travel."

Petitioners respectfully submit that the Court of Appeals' reliance on the right of interstate travel as an independent source of congressional authority to reach the conspiracy alleged here is misplaced, and reversal of the Court of Appeals is therefore respectfully urged.

CONCLUSION

The Court of Appeals' reversal of the District Court and its conclusion

that a private conspiracy allegedly directed against the Respondent Ward because of his membership in the Unification Church falls within the ambit of §1985(c), and further that the right of interstate travel is a basis for reaching the nonracial conspiracy alleged here, is an unjustified departure from the holding of this Court in Griffin, and distorts the underlying purpose and intent of §1985(c), so as to expand the classes of potential claimants beyond those recognized by this Court.

Petitioners respectfully pray that this Honorable Court grant this Petition for Writ of Certiorari and that the judgment of the United States Court of Appeals for the Fourth Circuit, rendered August 10, 1981, be reversed.

CERTIFICATE OF SERVICE

I hereby certify, in accordance with Rule 28, Rules of the United States Supreme Court, that I have served, on or before the 19th day of October, 1981, the required copies of this Petition for Writ of Certiorari to the Supreme Court of the United States, upon Daniel Litt, Esquire, 307 North Washington Street, Alexandria, VA 22314, counsel for Respondent Thomas Joseph Ward; to Peter W. Rowe, Esquire, 1400 Virginia National Bank Bldg., Norfolk, VA, counsel for Respondent Ken Connor, Sr.; to Harvey White, Esquire, 906 Plaza One Bldg., Norfolk, VA 23510, counsel for Respondent Lyle Mosier; to Steven F. Shames, Esquire, 2145 Old Greenbrier Road, Chesapeake, VA 23320, counsel for Respondent, Father Marty O'Rourke; to Respondents Mary Ward and Marty Ward, 118

Virginia Road, Pittsburgh, Pennsylvania; and to Mary Conroy and John Conroy, 2921 Mary Street, Pittsburgh, PA; Alan Tate Wood, 1242 Melody Drive, Denver, CO; Mary Carol Williams, 224 Fairmont Street, Pittsburgh, PA; Ted Morgan and Rose Morgan, 4216 Mt. Royal Boulevard, Alsn. Park, PA; Dee Anderson, 35 South Logan, Denver, CO; Lawrence C. Conroy, 103 Valley Hill Drive, Ross Twp., PA 15216; Joan Conroy, 103 Valley Hill Drive, Ross Twp., PA 15216.

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APPENDIX

APPENDIX "A"

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

NO. 80-1336

THOMAS JOSEPH WARD,

Appellant,

versus

KEN CONNOR, SR.; THOMAS JAMES WARD; MARY WARD; MARTY WARD; ROBERT S. MANDELKORN; EUGENIA MANDELKORN; LYLE MOISER; LAWRENCE V. CONROY; JOAN CONROY; JOHN CONROY; MARY CONROY; MARY CAROL WILLIAMS; ALAN TATE WOOD; DEE ANDERSON; FATHER MARTY O'ROURKE; TED MORGAN; ROSE MORGAN,

Appellees,

and

Maureen Winifred Ward; Arlene Doe; Ken Connor, Jr.; Phil Doe; John Doe; Richard Roe; Mary Roe; Judy Kimes; Reverend Dean; Marty Berg; Father Martin Conroy; Jeff Yeslein; Jack McConeghy; Betty McConeghy; Jo Munchouer and Sister Maria

Victoria,

Defendants.

Appeal from the United States District Court for the Eastern District of Virginia, at Norfolk. John A. MacKenzie, District Judge.

Argued: December 4, 1980 Decided: August 10, 1981

Before HAYNSWORTH and FIELD, Senior Circuit Judges; and PHILLIPS, Circuit Judge.

John E. Harrison for Appellant; R. Barrow Blackwell (Donnell P. Davis, Furniss, Davis and Rashkind on brief) for Appellees.

FIELD, Senior Circuit Judge:

Upon this appeal we are asked to decide whether 42 U.S.C. § 1985(c) affords redress for injuries allegedly resulting from a private conspiracy

actively engaged in interference with the plaintiff's religious beliefs.

Thomas Joseph Ward, a 28 year old member of the Unification Church, charged in his complaint that while en route to an airport to begin a trip from Virginia to New York, he was kidnapped, held captive, and subjected to physical and psychological abuse by his parents and others acting in concert with them during an attempt to "deprogram" him of his religious beliefs. Acting upon the defendants' 12(b)(6) motion, the district court dismissed three counts of the plaintiff's eight count complaint. Included in the counts dismissed was the one with which we are here concerned in which Ward alleged that the defendants engaged in a conspiracy to deprive him of his civil rights. Jurisdiction for

this count was invoked under § 1985(c).[1]

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1. 42 U.S.C. § 1985(c), which is the descendant of § 2 of the Civil Rights Act of 1871 and was formerly codified as 42 U.S.C. § 1985(3), reads in pertinent part as follows:

> If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; * * * in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right of privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any

Expressing doubt that § 1985(c) was ever intended to reach private conspiracies motivated by religious, rather than racial animus, the district court concluded that, in any event, the defendants were motivated by parental concern for the plaintiff's well-being rather than any discriminatory bias, and dismissed the complaint. Ward v. Conner, 495 F.Supp. 434 (E.D. Va. 1980).

In addressing the question, our starting point is, of course, Griffin v. Breckenridge, 403 U.S. 88 (1971), in which the Court abandoned the state action requirement announced in Collins v. Hardyman, 341 U.S. 651 (1951), and held that § 1985(c) provides a remedy for injuries resulting from purely private, racially motivated conspiracies to deprive

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(Footnote No. 1 - continued).

one or more of the conspirators.

a citizen of the equal protection of the laws. In Griffin, a group of whites, acting under the mistaken belief that blacks traveling on interstate highways were civil rights workers, blocked their passage and assaulted them. The Court found that such conduct "lies so close to the core of the coverage intended by Congress that it is hard to conceive of wholly private conduct that would come within the statute if this does not". Id., at 103. Although concluding that § 1985(c) covers private conspiracies, the Court cautioned "[t]hat the statute was meant to reach private action does not, however, mean that it was intended to apply to all tortious, conspiratorial interferences with the rights of others." Id., at 101. To that end the Court stated

> The constitutional shoals that would lie in the path of interpreting § 1985(3)

> as a general federal tort law can be avoided by giving full effect to the congressional purpose - by requiring, as an element of the cause of action, the kind of invidiously discriminatory motivation stressed by the sponsors of the limiting amendment. * * * The language requiring intent to deprive of equal protection, or equal privileges and immunities, means that there must be some racial, or perhaps otherwise class-based, invidiously discriminatory animus behind the conspirator's action.

Id., at 102.

As we have noted, the principal question before us is whether a religious group which is the object of the discriminatory animus may be deemed a class falling within the ambit of § 1985(c).[2] The Griffin Court declined

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2. A claim under § 1985(c) must embrace the following elements: (1) a conspiracy to go in disguise on the highway or on the premises of another; (2) for the purpose of depriving a person or class of person

to decide "whether a conspiracy motivated by invidiously discriminatory intent other than racial bias would be actionable under [§ 1985(c)]."[3] However, it did refer to the remarks of Senator Edmunds during the debate preceding the passage of the Civil Rights Act of 1871. In answer to an inquiry concerning the breadth of the Civil Rights legislation, Senator Edmunds stated:

(Footnote No. 2 - continued)

> of the equal protection of the law, or of equal privileges and immunities under the laws; (3) an overt act in furtherance of the conspiracy resulting in; (4) injury to the person or to property or deprivation of any of the rights or privileges of a citizen. See Griffin v. Breckenridge, 403 U.S. 88, 102-103. Unquestionably Ward's complaint satisfies elements (1), (3), and (4).

3. Griffin v. Breckenridge, 403 U.S. 88, 102 footnote 9.

> Certainly, referring to the "equal and impartial course of justice" mentioned in the second section of the third page. This obstruction of the equal and impartial course of justice, however, must under the provisions of all this bill, go so far as to deny and withhold from citizens of the United States that equality of protection in seeking justice which the Constitution of the United States gives them. We do not undertake in this bill to interfere with what might be called a private conspiracy growing out of a neighborhood feud of one man or set of men against another to prevent one getting an indictment in the State courts against men for burning down his barn; but, if in a case like this, it should appear that this conspiracy was formed against this man because he was a Democrat, if you please, or because he was a Catholic, or because he was a Methodist, * * * then this section could reach it. Cong.Globe, 42d Congress, 1st Sess. 567 (1871).

In the ten years since Griffin was decided, the Court has not had occasion to consider a definitive extension of the protected classes. However, the

lower federal courts have, almost without exception, extended the coverage of the statute to religious groups. Marlowe v. Fisher Body, 489 F.2d 1057 (6 Cir. 1973); Action v. Gannon, 450 F.2d 1227 (8 Cir. 1971); Rankin v. Howard, 457 F.Supp. 70 (D. Ariz. 1978); Baer v. Baer, 450 F.Supp. 481 (N.D. Cal. 1978). And those courts which have denied relief to nonsectarian classes have generally by way of dictum recognized that religious groups are entitled to its protection. See Western Telecasters, Inc. v. California Federation of Labor, 415 F.Supp. 30, 33 (S.D. Cal. 1976); Arnold v. Tiffany, 359 F.Supp. 1034, 1036 (C.D. Cal. 1973); aff'd on other grounds, 487 F.2d 216 (9 Cir. 1973), cert. denied, 415 U.S. 984 (1974). In the light of these cases and the legislative history, we think it reasonable to conclude that religious discrimination, being adkin to invidious racial

bias, falls within the ambit of § 1985(c), and that the plaintiff and other members of the Unification Church constitute a class which is entitled to invoke the statutory remedy.[4]

Having concluded that Ward's complaint satisfies the requisite elements of a § 1985(c) cause of action, it is, of course, necessary that we identify a source of congressional power to reach the alleged conspiracy. The Griffin Court found such power in § 2 of the Thirteenth Amendment as well as the right of interstate travel which the Court recognized was "among the rights

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4. The commentaries generally are in accord with this conclusion. See, e.g., Note, The Class-based Animus Requirement of 42 U.S.C. § 1985(c): A Suggested Approach, 64 Minnesota Law Review 635 (1980).

and privileges of National citizenship." Id., at 106. Since Ward is not a member of the Negro race, congressional authority cannot be based on the Thirteenth Amendment. However, the complaint clearly charges that a purpose of the conspiracy was to prevent Ward from traveling from state to state and that the conspirators did, in fact, interfere with Ward's constitutional right,[5] and this is sufficient to support his cause of action. In dismissing the § 1985 count, the district court observed that the gravamen of the complaint was not the deprivation of the plaintiff's right to

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5. Since we find congressional authority to reach the conspiracy under Ward's right of interstate travel, it is unnecessary for us to consider the troublesome question of congressional power under § 5 of the Fourteenth Amendment which confronted us in Bellamy v. Mason's Stores, Inc., 508 F.2d 504 (4 Cir. 1974).

interstate travel, "but rather interference with his First Amendment rights of freedom of religious association." This may be true. Nevertheless, as we have noted, the complaint specifically alleges that interference with the plaintiff's right to travel was one of the objects of the conspiracy and the fact that the conspiracy had other objectives is immaterial.

The district court also concluded that since the parents of the plaintiff were motivated to act by their concern for the well-being of their son, the requisite discriminatory class bias was absent. While we do not quarrel with the court's assumption in regard to such parental concern, the complaint sufficiently charges that the defendants were motivated to act as they did not only because they found the plaintiff's religious beliefs intolerable, but also

because of their animosity towards the members of the Unification Church. This, in our opinion, stated a discriminatory motive sufficient to support a claim under the statue. [sic]

In the light of the foregoing, we have no alternative but to reverse the action of the district court in its dismissal of count 1 of the plaintiff's complaint.

R E V E R S E D

APPENDIX "B"

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 80-1336

Thomas Joseph Ward,

Appellant,

versus

Ken Connor, Sr., et al,

Appellees,

and
Maureen Winifred Ward, et al,

Defendants

Appeal from the United States District Court for the Eastern District of Virginia, at Norfolk, John A. MacKenzie, District Judge

---

Upon motion of appellees, by counsel and for cause shown,

IT IS ORDERED that the mandate in the above-entitled case be, and it is

hereby, stayed pending application of the appellees in the Supreme Court of the United States for a writ of certiorari to this Court. The stay shall not exceed thirty (30) days unless the period is extended for cause shown.

Entered at the direction of Judge Field with the concurrence of Judge Haynsworth and Judge Phillips.

For the Court

/s/ William K. Slate, II
CLERK

APPENDIX "C"

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

THOMAS JOSEPH WARD,

Plaintiff

vs. CIVIL ACTION NO. 79-1071-N

KEN CONNER, SR., et al,

Defendants

O R D E R

In accordance with the Memorandum Opinion filed contemporaneously herewith, it is ORDERED that:

(1) Defendants' motion to dismiss is GRANTED with respect to Counts I, II, and VI;

(2) Defendants' motion to dismiss is DENIED with respect to Counts III, IV, V, VII and VIII, and

(3) Thomas James Ward, Mary Ward, Maureen Winifred Ward, Marty Ward,

Lawrence V. Conroy, Joan Conroy, John Conroy, Mary Conroy and Mary Carol Williams are DISMISSED as party defendants.

It is so ORDERED.

United States District Judge

Norfolk, Virginia
April 18, 1980

APPENDIX "D"

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

THOMAS JOSEPH WARD,

Plaintiff

vs. CIVIL ACTION NO. 79-1071-N

KEN CONNER, SR., et al,

Defendants

MEMORANDUM OPINION

This case comes before this Court on defendants' Rule 12(b) motion to dismiss. Defendants principally challenge the existence of subject matter jurisdiction, and contend that the Court should dismiss plaintiff's complaint in its entirety. Defendants additionally assert that even if the Court finds jurisdiction over the instant matter, several of the state claims set forth in plaintiff's complaint are not cognizable under

Virginia law and must be dismissed.

I.

Background

Thomas Joseph Ward, a member of the Unification Church, claims that it was his membership in the church that prompted his parents and other relatives to conspire to "de-program" Ward of his religious beliefs. Ward alleges that following a Thanksgiving visit to see his sister in Virginia Beach, he was kidnapped and held captive for 35 days. All the while, Ward maintains, his captors subjected him to a barrage of verbal and physical abuse in their vain attempt to "save" Ward from his devotion to the teachings of the Reverend Moon.

In his complaint, filed with this Court on November 27, 1979, Ward named 33 persons as defendants, and set forth

the following causes of action:

Count I -- a private conspiracy to deprive plaintiff of his civil rights under 42 U.S.C. §1985(c) [until 1976, codified as 42 U.S.S. §1985(3)];

Count II -- statutory conspiracy;

Count III -- assault;

Count IV -- battery;

Count V -- false imprisonment;

Count VI -- invasion of privacy;

Count VII -- intentional infliction of emotional distress; and

Count VIII -- grand larceny.

Plaintiff named all 33 defendants as partners in the alleged conspiracy of Count I, and a lesser number of defendants as parties to Counts II - VIII.

Moreover, plaintiff alleged two bases of subject matter jurisdiction for his claims: (1) federal jurisdiction pursuant to §1985(c) over Count I and

over Counts II - VIII by virtue of the doctrine of pendent jurisdiction; and (2) in the event that Court [sic] I was dismissed, diversity jurisdiction over the remaining state claims in Counts II - VIII.

In lieu of filing an answer, defendants Robert and Eugenia Mandelkorn have moved to dismiss plaintiff's suit. Defendants first attack the alleged jurisdictional bases, arguing that 42 U.S.C. §1985(c) does not afford plaintiff a remedy for injuries resulting from a private conspiracy, and that plaintiff's naming of "John Doe" defendants destroys diversity jurisdiction under 28 U.S.C. §1332. Defendants also insist that whatever the outcome of the jurisdictional question, Counts II, VI and VIII fail to state cognizable claims under Virginia law.

II.

Discussion

A. Subject Matter Jurisdiction

1. Jurisdiction Pursuant to 42 U.S.C. 1985(c)

The focal point of defendants' motion to dismiss is plaintiff's contention (Count I) that he has a cause of action against all defendants under 42 U.S.C. §1985(c). Plaintiff, a Caucasion, readily admits that the alleged conspiracy to de-program him was purely private in nature, involving no state action. Thus, we must decide whether a white male like plaintiff can invoke 42 U.S.C. §1985(c) to sue private persons who allegedly deprived him of constitutional rights.

42 U.S.C. §1985(c) provides as follows:

> If two or more persons in any State of territory conspire or go in disguise on the highway or on the premises

> of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws . . . if one or more persons engaged therein do or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators.

On its face, §1985(c) would appear to afford a remedy against all conspiracies abridging constitutional rights. Yet, the United States Supreme Court has carefully restricted the scope of §1985(c), mindful of the "constitutional shoals that would lie in the path of interpreting [§1985(c)] as a general federal tort law." Griffin v. Breckenridge, 403 U.S. 88, 101 (1971).

In Griffin v. Breckenridge, supra, the Court abandoned the long-standing state action requirement to give certain black plaintiffs a remedy in a §1985(c) suit brought against private persons who had conspired to assault plaintiff on a Mississippi highway. Plaintiffs alleged that their attackers had been motivated by racial bias: in the mistaken belief that plaintiffs were members of a Civil Rights group, defendants had acted in concert to intimidate them.

While holding for plaintiffs, the Griffin Court imposed two conditions, in addition to the express requirements of §1985(c), to limit the availability of §1985(3) to litigants alleging private conspiracies. First, the Court required that plaintiffs show "some racial, or perhaps otherwise class-based, invidiously discriminatory animus behind the conspirators' action." Id. at 102.

Second, the Court required that plaintiffs cite constitutional authority to justify extending §1985(c) to cover the private conspiracy alleged. Id. at 103.

The Griffin court found these two conditions easily met in the case before it. The conspirators in Griffin clearly were motivated by racial prejudice when they attacked plaintiffs. Then too, extending §1985(c) to reach the conspiracy in Griffin was fully sanctioned by the Constitution. The Thirteenth Amendment empowered Congress to identify the "badges and incidents of slavery" and to act to eradicate such vestiges of slavery, whether arising from a state or private source. Id. at 105. Moreover, Congress traditionally had been vested with authority to protect the right of interstate travel from private, as well as governmental interference. Id. at 106. As plaintiffs had alleged

that they were deprived of the right to travel unimpeded on the public highway, §1985(c) could surely be read to give plaintiffs relief from their assailants. Id.

In light of the interpretation given of §1985(c) by the Griffin Court, plaintiff claims that the provision reaches the alleged private conspiracy in this case. According to plaintiff, defendants were motivated to conspire against him by their dislike for the Unification Church. Such religious bias, maintains plaintiff satisfies the requirement for a showing of "class-based invidiously discriminatory animus." Furthermore, defendants allegedly seized plaintiff as he prepared to board a plane for a flight from Virginia to New York, thus depriving him of the right to travel interstate, a right Congress could protect from even private interference.

We recognize that several courts recently have recognized a cause of action under 42 U.S.C. §1985(c) for plaintiffs who have been the victims of conspiracies motivated by religious bias. See Marlow v. Fisher Body, 489 F.2d 1057 (6th Cir. 1973); Action v. Gannon, 450 F.2d 1277 (8th Cir. 1971); Rankin v. Howard, 457 F.Supp. 70 (D.Ariz. 1978); Baer v. Baer, 450 F.Supp. 481 (N.D. Cal. 1978). Yet, we are persuaded, from a review of the better-reasoned decisions subsequent to Griffin refusing to find a 1985(c) claim under circumstances similar to those in this case, that §1985(c) does not afford plaintiff a remedy in the instant case. See Styn v. Styn, No. 79-3468 (Feb. 7, 1980, N.D. Ill.) (slip opinion); Weiss v. Patrick, 453 F.Supp. 717 (D. R.I.), aff'd., 588 F.2d 818 (1st Cir. 1978), cert. denied, 442 U.S. 929 (1979).

In part, we reject plaintiff's §1985(c) claim because we are not at all convinced that §1985(c) was ever intended to reach private conspiracies motivated by religious, rather than racial, prejudice. The Griffin court expressly left open the question as to what kinds of class-based discriminatory animus would trigger application of §1985(c). Griffin v. Breckenridge, supra at 102 n.9. Thereafter, a federal court in this district construed the class-based animus requirement to include discrimination on the basis of "discrete, insular and immutable characteristics," (i.e. race, national origin, and sex). Bellamy v. Mason's Stores, Inc., 368 F.Supp. 1025, 1028 (E.D. Va. 1973), aff'd., 508 F.2d 504 (4th Cir. 1974). Applying the animus requirement, so defined, to this case, we do not find plaintiff's Unification Church membership

to be the type of immutable characteristic necessitating the invoking of §1985(c) relief. Unlike members of racial minorities, plaintiff here voluntarily joined the church and, presumably, could leave it if he so desired.

Moreover, assuming for a moment that religious bias satisfies the animus requirement of §1985(c), such bias is obviously lacking. This is not a case where strangers conspired to attack plaintiff simply because they found his religious beliefs intolerable. Rather, defendants in this matter are plaintiff's closest blood relatives, including his father and mother. It is readily apparent, therefore, that defendants were motivated to act, if at all, by their concern for the well-being of a loved one. Since a discriminatory motive is absent, there is no cognizable claim under 42 U.S.C. § 1985(c). Styn v. Styn,

supra; see also Weiss v. Patrick, supra.

In addition, we are of the opinion that a restrictive approach to the animus requirement for §1985(c) comports with the legislative history of the provision. Section 1985(c) was enacted in 1871 as part of the Reconstruction era civil rights legislation. Popularly known as the Ku Klux Klan Act, the statute was designed to privde a remedy for blacks who were the victims of Klan violence throughout the South, and who were without the protection of adequate state remedies. "The Class-Based Animus Requirements of 42 U.S.C. §1985(c): A Suggested Approach," 64 Minn. L.Rev. 635, 635-36 (1980). Plaintiff in the present case is not the victim of systematic racial terrorism. Nor is he denied access to state-created remedies (notably, Counts II - VIII consist of state law claims). Consequently, we

find that it would distort the purposes underlying §1985(c) to apply the civil rights statute to the private conspiracy alleged in this case.

In addition, the Constitution does not authorize extending §1985(c) to provide a civil remedy for the private conspiracy in the instant case. To be sure, plaintiff has alleged, inter alia, that he was deprived of the right to interstate travel when family and friends kidnapped him, and argues quite properly that §1985(c) may be read to cover conduct impinging upon the right to unimpeded interstate travel. The gravamen of plaintiff's complaint, however, is not deprivation of the right to travel interstate, but rather interference with his First Amendment rights of freedom of religion and association. Such First Amendment rights do not support an interpretation of §1985(c) extending the

statute to reach private conduct. See Bellamy v. Mason's Stores, Inc., 508 F.2d 504 (4th Cir. 1974). Rather, the First Amendment operates as a buffer against governmental intrusions upon a sphere of private conduct and belief. Id. at 507. Absent even a remote hint of state action in the conspiracy in question, §1985(c) may not be construed to give plaintiff a federal mode of relief.

As plaintiff's §1985(c) claim is wanting in both discriminatory animus and constitutional authorization, Count I must be dismissed, and with it those defendants named solely as defendants to the conspiracy claim set forth in Court [sic] I.

2. Jurisdiction Pursuant to 28 U.S.C. §1332.

In an attempt to find jurisdiction for the remaining Counts (II - VIII), plaintiff alternatively contends that

the state claims are properly before this Court pursuant to diversity jurisdiction. On the face of his complaint, plaintiff has fully complied with the requisites of 28 U.S.C. §1332: he has alleged complete diversity of citizenship of the parties, contending that while he is a citizen of New York, each of the defendants is a citizen of a state other than New York. In addition, plaintiff has claimed an amount in controversy exceeding $10,000.00.

In bringing suit, however, plaintiff included five defendants whose first and/or last names are unknown. Defendants here contend that plaintiff's naming of "John Doe" defendants destroys diversity jurisdiction automatically, since the state citizenship of such "John Doe" defendants is at best a matter of speculation.

Unpersuaded by defendants' argument,

we do not find that the Court has been divested of diversity jurisdiction by the mere presence of unnamed parties to this suit. Rather, we will allow plaintiff the opportunity to proceed with his claim in federal court, pending further developments that might disrupt 28 U.S.C. §1332 jurisdiction.

As a result, we will withhold any final decision on the diversity jurisdiction until the time for serving defendants has come to an end. Pursuant to an order of the Court dated January 21, 1980, plaintiff was given an additional 90 days in which to obtain service of process over defendants. At present, a few days yet remain in plaintiff's extension. If, at the end of the alloted [sic] period, plaintiff has identified and served a "Doe" defendant with process, and it seems apparent that the defendant, like plaintiff, is a

citizen of New York, we will dismiss the suit altogether for want of subject matter jurisdiction. Otherwise, plaintiff may continue with his lawsuit in this court.

B. The Challenged State Claims

Defendants challenge Counts II, VI and VIII as containing allegations that fail to state claims cognizable under Virginia state law. We proceed to deal with each of the challenged counts below.

1. Count II

Plaintiff alleges in Count II that various defendants conspired to represent plaintiff as being of unsound mind in an effort to obtain a conservatorship over him, and in so doing, harmed his reputation. Plaintiff contends that such conduct on the part of defendants violated Va. Code §18.2-499 and, consequently, that defendants are liable to him for the damage caused his personal

reputation. Defendants, on the other hand, maintain that the cited statutory provisions only deal with harm to business reputation, not in issue in the present case.

Va. Code §18.2-499(a) provides as follows:

> Any two or more persons, who shall combine, associate, agree, mutually undertake or concert gogether [sic] for the purpose of wilfully and maliciously injuring another in his reputation, trade, business or profession ... shall be jointly and severally of a class three misdemeanor ....

Va. Code §18.2-500, moreover, provides a civil remedy for "[a]ny person who shall be injured in his reputation, trade, business or profession by reason of a violation of §18.2-499...."

Several factors compel us to hold that no cause of action will lie under §18.2-500 where, as in this case, plaintiff alleges harm to his personal

reputation and not to any business interest. For one, "reputation," as employed in both §§18.2-499 and 500, must be read in its proper context. In each provision, meaning of the term is shaped by the references to "trade, profession or business" that follow it. Moreover, in setting forth a partial explanation of what damages may be recovered under the section, §18.2-500 refers to lost profits as a recoverable item. Clearly, then, the focus of §§18.2-499 and 500 is upon conspiracies resulting in business-related damages.

Recently, another federal court has dealt with the civil remedy afforded by §18.2-500, albeit in a case involving a question of the applicable statute of limitations. In Federated Graphics Companies, Inc. v. Napotnik, 424 F.Supp. 291, 293 (E.D. Va. 1976), the Court described §18.2-500 as a "statutory action

... for wrongful conduct directed to the business." Thus, as plaintiff complains only of defendants' misconduct adversely affecting his personal reputation, he does not have a remedy available under §18.2-500. Count II of plaintiff's complaint must be dismissed.

2. Count VI

Plaintiff has alleged generally that certain defendants invaded his privacy when they tried to "de-program" him. Defendants contend that Virginia law recognizes no common law right to sue for invasion of privacy, and thus, that Court [sic] VI should be dismissed.

A number of jurisdictions now recognize four categories of actionable invasions of privacy: (1) an unreasonable intrusion upon the seclusion of another; (2) an appropriation of another's name of likeness; (3) unreasonable publicity given to another's

private life; and (4) publicity unreasonably placing another in a false light before the public. Restatement (second) of Torts, §652A (1977). In the present case, plaintiff apparently alleges a common-law claim for invasion of privacy falling under category (1) of the above-listed categories. In effect, plaintiff claims that defendants interfered with his personal right of seclusion, and should be liable in damages for such an intrusion.

At the present time, however, Virginia law does not recognize the common-law right of action that plaintiff asserts in Court [sic] VI. To be sure, the Virginia General Assembly has created a staturoty cause of action to persons who are the victims of a category (2) loss of privacy. Va. Code §8.01-40 provides that "[a]ny person whose name, portrait, or picture is used without having first

a correlative tort theory of grand larceny. Plaintiff finds such a tort theory in the language of Va. Code 8.01-221, providing that:

> a ny person injured by the violation of an statute may recover from the offender such damages as he may sustain by reason of the violation.

Contending that no cause of action for grand larceny exists in Virginia, defendants move for the Rule 12(b)(6) dismissal of Count VIII.

We fully agree with the defendants that a tort theory of grand larceny is not cognizable under Virginia law. Va. Code 8.01-221 creates no new causes of action as derivatives of criminal misconduct. Rather, the statute merely preserves any existing civil remedies available to a litigant suing a wrongdoer who has previously been the subject of criminal penalties for his misconduct. Tyler

obtained the written consent of such person" may sue in damages. The Virginia Supreme Court, however, has not enlarged this statutory right, or in any way indicated its desire to fashion a common-law remedy for unwarranted interferences with the right of privacy.

Consequently, it would be inappropriate for this Court, exercising diversity jurisdiction, to create a cause of action for the invasion of privacy where state law recognizes no such right. See Evans v. Sturgill, 430 F.Supp 1209 (W.D. Va. 1977). Count VI must also be dismissed from this lawsuit.

3. Count VIII

Plaintiff claims in Count VIII that because defendants took personal property valued at more than $100 from him and thus committed grand larceny in violation of Virginia law, Va. Code 18.2-95, they also should be liable for damages under

v. Western Union Tel. Co., 54 F.Supp. 634 (W.D. Va. 1893).

We refuse to dismiss Count VIII, however, because plaintiff may avail himself of several common law theories in order to obtain compensation for the alleged wrongful taking of his property. Plaintiff seeks the return of his personal property as well as damages. He may pursue such relief under theories of replevin(claiming damages for the unlawful detention of his property) and conversion (requesting the return of the stolen items). Therefore, defendants' motion to dismiss Count VIII must be denied.

III

Conclusion

In conclusion, we grant defendants' Rule 12(b)(6) motion with respect to three counts of plaintiff's eight-count complaint. Count I, wherein plaintiff alleges a private conspiracy to deprive

him of his civil rights and seeks relief under 42 U.S.C. §1985(c), is fatally defective because plaintiff has failed to allege a sufficient class-based animus for the conspiracy, and because there is no constitutional authorization for reading §1985(c) to reach the instant case. Count II is similarly defective because Va. Code §18.2-500 provides no civil relief for harm done to plaintiff's personal reputation. Finally, Count VI must be dismissed because Virginia law recognizes no common law right to sue for invasion of privacy.

We deny defendants' motion to dismiss the entire complaint at this time for want of subject matter jurisdiction, however, determining that diversity jurisdiction may well support the bringing of plaintiff's state claims in

federal court. We postpone any final decision on the diversity question until the time for serving defendants with process has elapsed and the citzenship of any served "John Doe" defendants can be ascertained.

Thus, defendants' motion to dismiss with respect to Counts I, II and VI is GRANTED. Defendants' motion to dismiss with respect to the remaining counts (II, IV, V, VII and VIII) is DENIED. In addition, those persons served with process but named as defendants only with respect to Count I are DISMISSED as parties to this suit: Thomas James Ward, Mary Ward, Maureen Winifred Ward, Marty Ward, Lawrence V. Conroy, Joan Conroy, John Conroy, Mary Conroy and Mary Carol Williams.

United States District Judge

Norfolk, Virginia
April 18, 1980

APPENDIX "E"

PERTINENT PROVISIONS OF UNITED STATES CONSTITUTION

U.S.CONST. amend. I:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

U.S.CONST. amend. XIII:

> Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.
>
> Section 2. Congress shall have power to enforce this article by appropriate legislation.

APPENDIX "F"

PERTINENT PROVISIONS OF UNITED STATES CODE

42 U.S.C. §1985[1976]

(c) If two or more persons in any State or Territory conspire, or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws, or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice-President, or as a member of Congress of the United States; or to injure any citizen in person or

property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators.

28 U.S.C. §1343

(a) The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(1) To recover damages for injury to his person or property, or because of teh deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for

the protection of civil rights, including the right to vote.

Opposition

Office - Supreme Court, U.S.
FILED
NOV 27 1981
ALEXANDER L. STEVAS,
CLERK

No. 81-751

IN THE

Supreme Court of the United States

October Term, 1981

ROBERT S. MANDELKORN AND
EUGENIA MANDELKORN,
Petitioners,

vs.

THOMAS JOSEPH WARD,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

BRIEF IN OPPOSITION

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QUESTION PRESENTED FOR REVIEW

1. Whether Count I of the complaint filed by respondent states a claim under 42 U.S.C. § 1985(3) sufficient to withstand a motion to dismiss for failure to state a claim.[1]

PARTIES

The parties to this action in the court of appeals were the present respondent, Thomas Joseph Ward (as appellant), and the present petitioners, Robert S. Mandelkorn and Eugenia Maldelkorn (as appellees).[2]

---

[1]As the question presented is one of the sufficiency of the complaint, the complaint is appended to this opposition.

[2]The motion to dismiss in the district court was filed only by the Mandelkorns. That court *sua sponte* extended its order dismissing Count I of the complaint to all Count I defendants. Therefore the following district court defendants were named appellees together with the Mandelkorns: Thomas James Ward; Mary Ward; Maureen Winifred Ward; Marty Ward; Lawrence V. Conroy; Joan Conroy; John Conroy; Mary Conroy; and Mary Carol Williams. (The court of appeals' caption appears to be incorrect to the extent that it lists other appellees.)

Only the Mandelkorns have petitioned this Court for a writ of certiorari; of those respondents listed in the caption of their petition, only Thomas Joseph Ward, on whose behalf this brief in opposition is filed, has a litigation interest adverse to that of petitioners.

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IN THE

Supreme Court of the United States

October Term, 1981

ROBERT S. MANDELKORN AND
EUGENIA MANDELKORN,
Petitioners,

vs.

THOMAS JOSEPH WARD,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

BRIEF IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals, *Ward v. Connor* (Pet.App. A.1), is reported at 657 F.2d 45 (4th Cir. 1981). The opinion of the District court, *Ward v. Connor* (Pet.App. A.19) is reported at 495 F.Supp. 435 (E.D.Va. 1980).

JURISDICTION

Respondent agrees that this Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

Respondent invoked the jurisdiction of the district court pursuant to 42 U.S.C. § 1985(3) and 28 U.S.C. § 1343 and

pursuant to 28 U.S.C. § 1332. The appeal of the district court's dismissal of Count I of the complaint was taken pursuant to 28 U.S.C. § 1292(a)(1).

CONSTITUTIONAL PROVISION AND STATUTE INVOLVED

1. The constitutional right to travel interstate is involved in this case. It is a fundamental constitutional right not ascribed to a particular provision of the Constitution.

2. 42 U.S.C. § 1985(3).[3]

STATEMENT OF THE CASE

A. Proceedings Below

The complaint was filed in November, 1979. In lieu of answering, petitioners moved to dismiss the complaint pursuant to Fed.R.Civ.P. 12(b)(6) for failure to state a claim upon which relief could be granted. The motion was opposed by respondent, heard by the court, and granted as to Counts I, II and VI (Pet.App. A.17). Respondent appealed the dismissal of Count I – the claim based on 42 U.S.C. § 1985(3) – and the court of appeals reversed (Pet.App. A.14).

[3]In 1976, the statute was reproduced in the United States Code, apparently by inadvertence, as § 1985(c). The 1980 supplement to the United States Code readopts the original subsectioning, and the statute appears therein as § 1985(3). The court of appeals below used the § 1985(c) designation.

B. Facts

The question presented for review is whether Count I of the complaint states a cause of action under 42 U.S.C. § 1985(3). This question necessitates a comparison of the allegations of the complaint with the requisite elements of a cause of action under § 1985(3).

As the case arises on a Rule 12(b)(6) motion, the allegations of the complaint must be construed in favor of respondent. *Scheuer v. Rhodes*, 416 U.S. 232, 237 (1974). Respondent in 1978 (the time of the events complained of) was a 28-year old married male and a member of the Unification Church. He alleged a conspiracy resulting from the conspirators' class-based animus against the Unification Church and its members. The named conspirators included four relatives of respondent (his parents, brother, and sister) and 20-plus non-relatives. Respondent alleged that at the instance of his parents he had traveled from New York City to Virginia Beach, Virginia, for Thanksgiving Day, 1978, and that, instead of being taken to the airport for the return trip, was diverted to a private home in the area. There he was held captive through the use of force and threats of force, and was permanently relieved of approximately $100.00 and other valuables. Two days later he was transferred to a motel in Norfolk, Virginia (the room having been previously reserved in the name of petitioners Mandelkorn), where he was stripped to his shorts and was kept under close guard by a number of the conspirators. The next morning he attempted to escape, made it as far as the motel lobby, and was recaptured. He was returned to the motel room and was then beaten, choked, gagged and locked in the bathroom. Thereafter, respondent was transported by van to Pittsburgh, Pennsylvania (with various conspirators sitting on him as the vehicle neared toll booths and at other

escape opportunities) and for the next month was held captive and under constant guard in a private home in Pittsburgh. During this time respondent was subjected to continual harangues, lectures, and readings against the Unification Church, some lasting as long as eighteen hours, and was threatened with physical violence, including his own death and his mother's suicide. These actions were all taken for the purpose of coercing respondent into renouncing his religious beliefs and renouncing his affiliation with the Unification Church. He escaped from captivity on December 28, 1978 (Resp. App. 1a-20a).

The essential elements of a § 1985(3) cause of action are: (1) the existence of a conspiracy; (2) for the purpose of depriving a person of class of persons of the equal protection of the laws or of equal privileges and immunities under the laws; (3) an overt act in furtherance of the conspiracy; and (4) injury to plaintiff, either to his person or property, or by deprivation of his rights and privileges as a citizen of the United States. *See Griffin v. Breckenridge,* 403 U.S. 88, 102-103 (1971).

Here, as the court of appeals noted, the complaint unquestionably satisfied elements 1, 3 and 4 (Pet. App. A.7-A.8 n. 2). The court of appeals held that the second element was likewise satisfied because § 1985(3) encompasses private conspiracies motivated by religious animosity. The court concluded that "religious discrimination, being akin to invidious racial bias, falls within the ambit of § 1985(c), and that the plaintiff and other members of the Unification Church constitute a class which is entitled to invoke the statutory remedy." (Pet.App. at A.10-A.11) (footnote omitted).

SUMMARY OF ARGUMENT

The petition for a writ of certiorari should be denied because there is no conflict between or among the federal circuits, because the court of appeals' interpretation of the scope of § 1985(3) is firmly supported by relevant case law and legislative history, because Congress is unquestionably empowered to protect by appropriate legislation the right to travel interstate, and because the motivation of the conspirators is not appropriately decided on a Rule 12(b)(6) motion.

ARGUMENT

A. THE DECISION OF THE FOURTH CIRCUIT DOES NOT CONFLICT WITH THE DECISION OF ANY OTHER FEDERAL COURT OF APPEALS.

In *Griffin v. Breckenridge,* 403 U.S. 88 (1971), this Court held that 42 U.S.C. § 1985(3) applies to purely private conspiracies without the necessity of state action. *Griffin* makes clear that the statute is not in the nature of a general federal tort law and does not apply to all private conspiracies. Rather, "there must be some racial, or perhaps otherwise class-based, invidiously discriminatory animus behind the conspirators' action." *Griffin, supra,* 408 U.S. at 102.

Because *Griffin* was a racial discrimination case, this Court did not decide whether (or which) non-racial groups may avail themselves of the remedy afforded by § 1985(3). However, since *Griffin,* no federal court of appeals has, to respondent's knowledge, limited the scope of § 1985(3) to only racially motivated conspiracies.[4]

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[4] *See, e.g., Scott v. Moore,* 640 F.2d 708, 723 (5th Cir. 1981), *reh. granted,* 656 F.2d 108 and cases cited therein.

The specific question in this case is whether a conspiracy motivated by religious-based discrimination is actionable under § 1985(3). Of those federal courts which have considered this question, the overwhelming majority has answered affirmatively, as did the court of appeals below. *See Marlowe v. Fisher Body,* 489 F.2d 1057 (6th Cir. 1973); *Action v. Cannon,* 450 F.2d 1227 (8th Cir. 1971); *Cooper v. Molko,* 512 F.Supp. 563 (N.D.Cal. 1981); *Augenti v. Cappellini,* 84 F.R.D. 73 (M.D.Pa. 1979); *Weiss v. Wilow Tree Civic Assn.,* 467 F.Supp. 803 (S.D.N.Y. 1979); *Rankin v. Howard,* 457 F.Supp. 70 (D.Ariz. 1978), *rev'd on other grounds,* 633 F.2d 844 (9th Cir. 1980), *cert. denied,* ____ U.S. ____, 101 S.Ct. 2020 (1981); *Baer v. Baer,* 450 F.Supp. 48 (N.D.Cal. 1978); *Mandelkorn v. Patrick,* 359 F.Supp. 692 (D.D.C. 1973).[5]

Nonetheless, petitioners contend that the decision of the court of appeals below is in conflict with decisions of the Third Circuit, notably *Novotny v. Great American Federal Savings & Loan Assn.,* 584 F.2d 1235 (3d Cir. 1978), *rev'd,* 442 U.S. 366 (1979) and *Carchman v. Korman Corp.,* 594 F.2d 354 (3d Cir. 1979). The short and complete answer to this contention is that in neither *Novotny* nor *Carchman* did the Third Circuit even consider – let alone decide – whether § 1985(3) reaches conspiracies motivated by religious antipathy. *Novotny* involved alleged discrimination against women, *Carchman* against tenant organizers.

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[5]In addition, a number of federal courts have recognized in dicta that religious-based discrimination is within the reach of § 1985(3). *Life Insurance Co. of North America v. Reichardt,* 591 F.2d 499, 505 (9th Cir. 1979); *Western Telecasters, Inc. v. California Federation of Labor, AFL-CIO,* 415 F.Supp. 30, 33 (S.D.Cal. 1976); *Arnold v. Tiffany,* 359 F.Supp. 1034, 1036 (C.D.Cal. 1973), *aff'd,* 487 F.2d 216 (9th Cir. 1973), *cert. denied,* 415 U.S. 984 (1974).

Nor is there, as petitioners perhaps suggest, a conflict in approaches between these circuits. The "immutable characteristics" language appearing in *Bellamy v. Mason's Stores, Inc.*, 368 F.Supp. 1025, 1028 (E.D.Va. 1973), *aff'd*, 508 F.2d 504 (4th Cir. 1974) and in *Novotny* and *Carchman* was not utilized as an exclusive standard for adjudging § 1985(3) cases. Indeed, in *Carchman*, the Third Circuit recognized "historically pervasive discrimination" as an equal standard. *Carchman, supra*, 594 F.2d at 356. And, proving that actions speak louder than words, the Third Circuit has accorded § 1985(3) status to the perfectly mutable category of advocates of equal employment opportunity. *Richardson v. Miller*, 445 F.2d 1247 (3d Cir. 1971).

The federal courts which have recognized religious discrimination as a form of invidious class-based discrimination under § 1985(3) have adhered both to the legislative history of the statute and to this Court's admonition against creating a general federal tort law. Section 1985(3) was enacted as part of the Ku Klux Klan Act of 1871. The oft-quoted remarks of Senator George Edmunds (R-Maine) during the floor debate preceding the Act's passage demonstrate congressional awareness that § 1985 would be applied to religious groups:

> We do not undertake in this bill to interfere with what might be called a private conspiracy growing out of a neighborhood feud of one man or set of men against another to prevent one [from] getting an indictment in the State courts against men for burning down his barn; but if in a case like this, it should appear that this conspiracy was formed against this man because he was a Democrat, if you please, or because he was a

> Catholic, or because he was a Methodist, or because he was a Vermonter . . . then this section could reach it.
>
> Cong. Globe, 42d Cong., 1st Sess. 567 (1871).

The inclusion of religious classes within the coverage of § 1985(3) preserves the narrow scope of the statute. The court which have accepted a religion group as a qualifying class under § 1985(3) have recognized that religious hatred has the hallmark of racial hatred and that it is a "kind of irrational and odious class discrimination akin to racial bias." *Arnold v. Tiffany,* 359 F.Supp. 1034, 1036 (C.D.Cal. 1973). As the court explained in *Baer v. Baer, supra,* 450 F.Supp. at 491:

> While religious status may differ from racial status because it is not a congenital and inalterable trait, membership in a minority religious group, like membership in a minority racial group, has often excited the fear, hatred and irrationality of the majority. Two thousand years of human history compellingly prove that no easier road to martyrdom is found than in adherence in an unpopular religious faith.

B. THIS ACTION IS BASED ON THE CONSTITUTIONAL RIGHT TO TRAVEL INTERSTATE.

This case involves the right to travel interstate. It is that constitutional right of respondent which was infringed by the conspiracy, and it is that constitutional right which is within the power of Congress to protect by appropriate legislation — namely § 1985(3).

Petitioners argue that the aim of the conspiracy was to infringe respondent's First Amendment rights (Pet. 25).

However, as the court of appeals properly noted, "the complaint specifically alleges that interference with the plaintiff's right to travel was one of the objects of the conspiracy and the fact that the conspiracy had other objectives is immaterial." (Pet. App. A.13). Here, as in *Griffin*, "it is open to [plaintiffs] to prove at trial that they had been engaging in interstate travel or intended to do so, that their federal right to travel interstate was *one of the rights* meant to be discriminatorily impaired by the conspiracy . . . ." *Griffin, supra,* 403 U.S. at 106 (emphasis added).

Griffin also requires identification of congressional power to warrant application of the statute in each case. *Griffin, supra,* 403 U.S. at 104. There can be no serious post-*Griffin* doubt that the right to travel interstate is an identifiable source of congressional power to reach a conspiracy infringing that right. The right to travel interstate is a virtually unconditional personal right guaranteed by the Constitution to *all citizens;* it is a right broadly assertable against private interference as well as governmental action; and it exists independent of the Fourteenth Amendment. *Griffin, supra,* 403 U.S. at 105-106; *Shapiro v. Thompson,* 394 U.S. 618, 620 (1969) (Stewart, J., concurring). There is no support in law or in logic for petitioners' argument that the right is race-dependent in the context of § 1985(3).

C. THE MOTIVATION OF THE CONSPIRATORS IS A FACT QUESTION.

Petitioners argue that they are entitled to an inference that the conspiracy was motivated by parental concern rather than by animosity against the Unification Church (Pet. App. A. 21-22). This is an unpermitted inference. At most, petitioners raise a fact question inappropriate for

disposition on a motion to dismiss. Two courts have so held in identical circumstances. *Cooper v. Molko,* 512 F.Supp. 563 (N.D.Cal. 1981); *Augenti v. Cappellini,* 84 F.R.D. 73 (M.D.Pa. 1979). The court in *Cooper* added,

> We note, moreover, that whatever good ultimate purpose the Defendants may have had in mind, that good motive would not necessarily negate their alleged animus against Plaintiff's religious group, which Plaintiff claims prompted their actions. *Cooper v. Molko, supra,* 512 F.Supp. at 570.

The cases relied upon by petitioner in support of their "parental concern" theory are factually distinguishable. All defendants in the unreported case of *Van Styn v. Van Styn,* (Civil No. 79 C 3468, N.D.Ill., Feb. 7, 1980) were relatives of the plaintiff; here, the complaint identifies more than 20 unrelated conspirators – including petitioners in this Court. In *Weiss v. Patrick,* 453 F.Supp. 717 (D.R.I. 1978), the entire case was resolved only after a full trial on the merits.

CONCLUSION

The complaint sufficiently alleges conspiratorial interference with a right protected and protectable through § 1985(3) and sufficiently alleges an underlying class-based animus. The petition for a writ of certiorari should be denied.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this brief in opposition to the petition for a writ of certiorari was mailed, postage prepaid, this 25 day of November, 1981 to all counsel of record and to all *pro se* parties.

Dorothy Sellers

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Norfolk Division

THOMAS JOSEPH WARD, Plaintiff,	)	
v.	)	Civil Action No. 79-1071-N
KEN CONNOR, SR., THOMAS JAMES WARD, MARY WARD, MAUREEN WINIFRED WARD, MARTY WARD, ARLENE DOE, KEN CONNOR, JR., PHIL DOE, JOHN DOE, ROBERT S. MANDELKORN, EUGENIA MANDELKORN, RICHARD ROE, MARY ROE, LYLE MOSIER, LAWRENCE V. CONROY, JOAN CONROY, JOHN CONROY, MARY CONROY, JUDY KIMES, REVEREND DEAN, MARY CAROL WILLIAMS, ALAN TATE WOOD, DEE ANDERSON, MARTY BERG, FATHER MARTY O'ROURKE, TED MORGAN, ROSE MORGAN, FATHER MARTIN CONROY, JEFF YESLEIN, JACK McCONEGHY, BETTY McCONEGHY, JO MUNCHOUER, and SISTER MARIA VICTORIA, Defendants.	)	JURY DEMAND

RECEIVED
NOV. 27, 1979
CLERK,
U.S. DISTRICT COURT
ALEXANDRIA, VIRGINIA

COMPLAINT

JURISDICTION AND VENUE

1. This court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1332, 1343(1). 1343(4) and 42 U.S.C. § 1985(3).

2. Plaintiff, Thomas Joseph Ward, is a citizen of the State of New York. Each defendant is a citizen of a state other than the State of New York. The matter in controversy exceeds $10,000.00, exclusive of interest and costs.

3. Venue is proper in this jurisdiction pursuant to 28 U.S.C. § 1391(b). Most of the wrongful acts and deprivations of rights for which plaintiff seeks relief occurred within the Eastern District of Virginia, and have caused personal injury within the Eastern District of Virginia, although some of the acts complained of also took place outside the Eastern District of Virginia pursuant to the conspiracy. Furthermore, many of the defendants are Virginia residents, and most of the defendants actively participated in the conspiracy in the Eastern District of Virginia. Defendants have caused events to occur in Virginia of sufficient quality and quantity to confer jurisdiction upon this Court.

PARTIES

4. Plaintiff is an adult citizen of the State of New York residing at 10 Dock Road, Barrytown, New York. At the time of the events complained of herein, the plaintiff was (and remains) a member, adherent and believer of the Unification Church (the "Church"), an international

religious organization. The members of the Church and the plaintiff herein constitute a recognizable group of persons who are bound together by an intellectual and spiritual nexus. Through said association the plaintiff sought to disseminate and enhance his religious beliefs through the free exchange of ideas, through interstate travel and through peaceful assembly.

5. Defendants Thomas James Ward and Mary Ward (the "Wards") are citizens of the Commonwealth of Pennsylvania, and the parents of the plaintiff. The Wards held meetings with and communicated with the other defendants and personally participated in the wrongful conduct and civil conspiracy complained of herein by, among other acts, forcibly removing plaintiff to various locations and falsely imprisoning him in deprivation of his civil rights.

6. Defendant Maureen Winifred Ward ("Maureen") is, upon information and belief, a citizen of the Commonwealth of Virginia and a sister of the plaintiff. Maureen held meetings with and communicated with the other defendants and personally participated in the wrongful conduct and civil conspiracy complained of herein by, among other acts, forcibly removing plaintiff to various locations and falsely imprisoning him in deprivation of his civil rights.

7. Defendant Marty Ward ("Marty") is a citizen of the Commonwealth of Pennsylvania and a brother of the plaintiff. Marty held meetings with and communicated with the other defendants and personally participated in the wrongful conduct and civil conspiracy complained of herein by, among other acts, forcibly removing plaintiff to various locations and falsely imprisoning him in deprivation of his civil rights.

8. Defendant Arlene "Doe" ("Arlene"), whose true surname is unknown, is, upon information and belief, a citizen of the Commonwealth of Virginia. On information and belief, Arlene communicated with the other defendants, agreed to pursue the wrongful objectives of the civil conspiracy more fully described herein, and participated in the wrongful conduct complained of herein by, among other acts, utilizing her private residence for the wrongful imprisonment of the plaintiff in order to deprive him of his civil rights.

9. Defendant Ken Connor, Sr. is a citizen of the State of West Virginia. Ken Connor, Sr. held meetings with and communicated with the other defendants and agreed to participate in the wrongful conduct complained of herein by, among other acts, forcibly removing plaintiff to various locations and falsely imprisoning him in deprivation of his civil rights.

10. Defendant Ken Connor, Jr. is a citizen of the State of West Virginia. Ken Connor, Jr. held meeting with and communicated with the other defendants and participated in the wrongful conduct complained of herein by, among other acts, forcibly removing plaintiff to various locations and falsely imprisoning him in deprivation of his civil rights.

11. Defendant Phil "Doe" ("Phil"), whose true surname is unknown, is, upon information and belief, a citizen of the State of West Virginia. Phil held meetings with and communicated with the other defendants and participated in the wrongful conduct complained of herein by, among other acts, forcibly removing plaintiff to various locations and falsely imprisoning him in deprivation of his civil rights.

12. Defendant John Doe is, upon information and belief, a citizen of the Commonwealth of Virginia. Upon information and belief, John Doe held meetings with and communicated with the other defendants and participated in the wrongful conduct complained of herein by, among other acts, falsely imprisoning the plaintiff so as to deprive him of his civil rights.

13. Defendants Robert S. Mandelkorn and Eugenia Mandelkorn are citizens of the Commonwealth of Virginia. The Mandelkorns held meetings with and were in communication with the other defendants and personally participated in the wrongful conduct complained of herein by, among other acts, forcibly removing plaintiff to various locations and falsely imprisoning him in deprivation of his civil rights.

14. Defendants Richard Roe and Mary Roe are, upon information and belief, citizens of the Commonwealth of Virginia. The Roes were in communication with the other defendants and personally participated in the wrongful conduct complained of herein.

15. Defendant Lyle Mosier ("Mosier") is a citizen of the Commonwealth of Virginia. Mosier was in communication with the other defendants and personally participated in the wrongful conduct complained of herein.

16. Defendants Lawrence V. Conroy and Joan Conroy are citizens of the Commonwealth of Pennsylvania and are an uncle and aunt, respectively, of the plaintiff. Lawrence V. Conroy and Joan Conroy held meetings with and communicated with the other defendants, agreed to pursue the wrongful objectives of the conspiracy, and participated in the wrongful conduct of the conspiracy by, among other acts, utilizing their private residence for the

wrongful imprisonment of the plaintiff in order to deprive him of his civil rights.

17. Defendants John Conroy and Mary Conroy are citizens of the Commonwealth of Pennsylvania, and are an uncle and aunt, respectively, of the plaintiff. John Conroy and Mary Conroy held meetings with and communicated with the other defendants agreed to pursue the wrongful objectives of the conspiracy, and participated in the wrongful conduct of the conspiracy by, among other acts, utilizing their private residence for the wrongful imprisonment of the plaintiff in order to deprive him of his civil rights.

18. Defendant Judy Kimes ("Kimes") is, upon information and belief, a citizen of the Commonwealth of Pennsylvania. Kimes communicated with the other defendants and personally participated in the wrongful acts complained of herein.

19. Defendant Reverend Dean ("Dean") is, upon information and belief, a citizen of the Commonwealth of Pennsylvania. Dean communicated with the other defendants and personally participated in the wrongful acts complained of herein.

20. Defendant Mary Carol Williams ("Williams") is a citizen of the Commonwealth of Pennsylvania, and a sister of the plaintiff. Williams communicated with the other defendants and personally participated in the wrongful acts complained of herein.

21. Defendant Alan Tate Wood ("Wood") is, upon information and belief, a citizen of the State of Colorado. Wood held meetings with and communicated with the other defendants and participated in the wrongful conduct complained of herein.

22. Defendant Dee Anderson ("Anderson") is, upon information and belief, a citizen of the State of Colorado. Anderson held meetings with and communicated with the other defendants and participated in the wrongful conduct complained of herein.

23. Defendant Marty Berg ("Berg") is, upon information and belief, a citizen of the Commonwealth of Pennsylvania. Berg held meetings with and communicated with the other defendants and personally participated in the wrongful conduct complained of herein including, among other acts, fasely imprisoning plaintiff in deprivation of his civil rights.

24. Defendant Father Marty O'Rourke ("O'Rourke") is, upon information and belief, a citizen of the Commonwealth of Pennsylvania. Defendant O'Rourke communicated with the other defendants and personally participated in the wrongful conduct complained of herein.

25. Defendants Ted Morgan and Rose Morgan (the "Morgans") are, upon information and belief, citizens of the Commonwealth of Pennsylvania. The Morgans communicated with the other defendants and personally participated in the wrongful conduct complained of herein.

26. Defendant Father Martin Conroy ("Father Conroy") is a citizen of the Commonwealth of Pennsylvania and an uncle of the plaintiff. Father Conroy communicated with the other defendants and personally participated in the wrongful conduct complained of herein.

27. Defendant Jeff Yesline ("Yesline") is, upon information and belief, a citizen of the Commonwealth of Pennsylvania. Yesline communicated with the other defendants and personally participated in the wrongful conduct complained of herein.

28. Defendants Jack McConeghy and Betty McConeghy (the "McConeghys") are citizens of the Commonwealth of Pennsylvania. The McConeghys communicated with the other defendants and personally participated in the wrongful conduct complained of herein.

29. Defendant Jo Munchouer ("Munchouer") is, upon information and belief, a citizen of the Commonwealth of Pennsylvania. Munchouer communicated with the other defendants and personally participated in the wrongful conduct complained of herein.

30. Defendant Sister Maria Victoria, a/k/a Peggy Bennet ("Sister Maria Victoria") is, upon information and belief, a citizen of the State of Louisiana. Sister Maria Victoria communicated with the other defendants and personally participated in the wrongful conduct complained of herein.

31. Other persons who acted in concert with the named defendants as co-conspirators in carrying out the acts complained of also include certain unnamed persons (the "conspirators") who are not now parties to this suit.

COUNT I
(Conspiracy in violation of 42 U.S.C. § 1985(3))

A. The Conspiracy

32. On or about November 22, 1978, the defendants formed a conspiracy with respect to which each and every defendant was or became a co-conspirator. The purpose of the conspiracy was to deprive plaintiff of the equal protection of the law and of the privileges and immunities granted to him under the laws and the Constitution of the United States. The conspiracy was the result of defen-

dants' class based animus towards the Church and its members, and because plaintiff was a member of that class of persons who belong to the Church. Defendants' purpose was willfully, wrongfully and maliciously (a) to coerce the plaintiff through the use of force, threats of force, verbal abuse and deprivation of liberty into renouncing his religious affiliation with the Church, (b) to prevent plaintiff from freely associating with other members of the Church, (c) to prevent and intimidate plaintiff from traveling among and between the several states, (d) to prevent plaintiff from freely discussing and exchanging his religious beliefs and ideas, and (e) to prevent plaintiff from freely exercising his religious beliefs.

33. On one previous occasion, which occurred on or about November 26, 1975, defendants Mary Ward and Marty Ward and one Judy Handzlick had restrained plaintiff against his will in a motel room in Kingston, New York for the purpose, *inter alia*, of coercing him into renouncing his religious affiliation with the Church. This had proved unsuccessful, as plaintiff had been able to escape in less than one day. Defendants Mary Ward and Marty Ward thereafter entered into this pervasive conspiracy to accomplish the goals set forth in paragraph 32. In the absence of injunctive relief, the danger exists that defendants Mary Ward, Marty Ward, Thomas James Ward, Maureen Ward, and others will again form a conspiracy, the purpose of which is to accomplish the goals set forth in paragraph 32.

B. Acts in Furtherance of the Conspiracy

34. On or about November 22, 1978, during a telephone conversation between plaintiff and defendant Mary Ward, plaintiff informed defendant Mary Ward

that he would not be coming to the home of his sister, defendant Maureen, for Thanksgiving.

35. Defendant Mary Ward implored plaintiff to come to defendant Maureen's house for Thanksgiving, knowing full well that if he came she and her co-conspirators would, *inter alia*, kidnap plaintiff and attempt to coerce him into renouncing his religious affiliation with the Church.

36. Defendant Thomas James Ward also talked to plaintiff on the telephone on the evening of November 22, 1978. Thomas James Ward also implored plaintiff to come to the home of defendant Maureen, for Thanksgiving, knowing full well that if plaintiff came, he and his co-conspirators would, *inter alia*, kidnap plaintiff and attempt to coerce him into renouncing his religious affiliation with the church.

37. Plaintiff acceded to the insistence of defendants Thomas James Ward and Mary Ward and traveled from New York City to Virginia Beach on Thanksgiving morning of November 23, 1978.

38. Early in the morning of November 24, 1978, defendants Maureen Ward, Marty Ward and Mary Ward, under the pretext of taking plaintiff to the airport, took plaintiff instead, against his will, to the home of defendant Arlene.

39. In spite of plaintiff's attempts to escape, defendants Marty Ward, Mary Ward and Maureen Ward forcibly restrained him from leaving.

40. When plaintiff and defendants Marty Ward, Mary Ward and Maureen Ward arrived at the home of Arlene, they were joined by six other defendants, Ken Connor, Sr., Ken Connor, Jr., Robert S. Mandelkorn, Eugenia Mandelkorn, Phil Doe and John Doe.

41. Immediately after plaintiff arrived at the home of defendant Arlene, he was taken to the kitchen where the defendants, by use of force, took from plaintiff money in excess of $100 and other valuables, none of which was ever returned.

42. Defendants continued to restrain plaintiff at the home of defendant Arlene through the use of force and threats of force through Sunday, November 26, 1978. The force and threats of force included (a) a threat by Ken Connor, Sr. to "beat the hell out of [him]" if he were to "try anything" and (b) being struck with great force with a clenched fist on the thigh on at least two occasions by defendant Phil Doe.

43. In spite of the fact that plaintiff informed defendants that their abusive treatment was aggravating his ulcers, a condition of which defendants Thomas James Ward, Mary Ward, Maureen and Marty were well aware, defendants continued the abusive treatment including refusing to allow plaintiff to sleep for more than short periods, forcing plaintiff to engage in a grueling regimen of exercise, and continuous threats and use of force.

44. On Sunday, November 26, 1978, several defendants told plaintiff they were going running, put a baseball cap on his head, forced him into the back seat of a car driven by defendant Robert Mandelkorn, painfully jammed the baseball cap over plaintiff's eyes, and forced plaintiff to accompany them to a motel named the Ocean Island Inn. En route to the motel, plaintiff was guarded in the back seat by defendant Phil Doe and in the front seat by Ken Connor, Jr., both of whom forced plaintiff to stay in the car against his will.

45. Plaintiff was forcibly taken to one of the two rooms in the motel which had previously been reserved in the name of defendant Robert Mandelkorn.

46. After plaintiff and defendants Ken Connor, Sr., Ken Connor, Jr., Phil Doe, Thomas James Ward, Mary Ward, Maureen Ward, Marty Ward, Eugenia Mandelkorn and Robert Mandelkorn had arrived at the motel they were joined by defendants Richard Roe and Mary Roe.

47. While at the motel, plaintiff was compelled to remain by the use of force and threats of force, and by other acts which made it impossible for him to leave, including (a) the posting of guards, including defendants Phil Doe and Ken Connor, Jr., at the door to the room, and (b) being forced to sleep in his jockey shorts only.

48. The following morning, Monday, November 27, 1978, plaintiff, while wearing only his jockey shorts, had an opportunity to escape from the motel room and seized it, running into the motel lobby and loudly informing anyone who could hear him that he was being held against his will and asking anyone who could hear him, including the motel receptionist Yancey Johnson, to call the police for assistance. Yancey Johnson informed the manager of the motel, defendant Lyle Mosier, of the occurrence. When defendant Mosier called the police, he merely informed them of a disturbance which threatened the security of the motel but, to prevent the discovery of the conspiracy, said nothing of plaintiff's requests for assistance.

49. By that time, defendants Ken Connor, Jr. and Phil Doe had chased plaintiff into the motel lobby, attempted to offer explanations for plaintiff's behavior, grabbed plaintiff, and through the use of extreme force carried plaintiff back to the motel room.

50. When defendants Ken Connor, Jr. and Phil Doe got plaintiff back into the room, they punched him in the face and other parts of his body and, when he kept screaming for the police, they choked him, cut off his ability to breathe, and, with the assistance of defendant Marty Ward, stuffed a rag into his mouth.

51. After having beaten and choked the plaintiff, they pushed him into a bathroom and closed the door.

52. Plaintiff was able to remove the rag from his mouth and again screamed for the police.

53. When plaintiff screamed for the police, defendants Ken Connor, Jr. and Phil Doe came back into the bathroom, choked plaintiff again, and stuffed the rag back into his mouth. They then locked the bathroom door from the outside.

54. To keep plaintiff from attempting to summon the police again, defendant Ken Connor, Jr. told him that the people at the motel (the people being, upon information and belief, the owners of the motel, including defendant Mosier) liked them and there was no sense in trying to get them to obtain help.

55. A police officer, Kevin Cartino, did arrive at the motel in response to a phone call from the motel owner, defendant Mosier. After speaking briefly with defendant Maureen Ward, the police officer instructed defendant Maureen to keep the noise down and left.

56. The severe beating administered to plaintiff had caused his face to be cut and swollen.

57. Defendants Robert Mandelkorn and Eugenia Mandelkorn thereafter arrived, saw plaintiff's cut and swollen face, talked to him for some time, but did nothing (a) to assist plaintiff in securing his release or (b) to prevent the infliction of further injuries.

58. On the same day, several defendants forced a gag back into plaintiff's mouth and forced him into a van. Defendants Marty Ward, Ken Connor, Jr., Phil Doe and Mary Ward accompanied plaintiff in the van. They pro-

ceeded to transport him in the van from Virginia Beach, Virginia to Pittsburgh, Pennsylvania.

59. During the trip from Virginia Beach to Pittsburgh, whenever the van approached an area, such as a toll gate, where there was the possibility of plaintiff enlisting help, several defendants sat upon him and held him down, thereby making it impossible for him to cry out or otherwise obtain assistance.

60. In Pittsburgh, plaintiff was taken to the home of defendants Lawrence V. Conroy and Joan Conroy. He was joined at the home by defendants Ken Connor, Jr., Phil Doe, Thomas James Ward, Marty Ward, Maureen Ward and, somewhat later, John Conroy and Mary Conroy.

61. On Tuesday, November 28, 1978, defendant Judy Kimes and defendant Reverend Dean appeared at the home of defendants Lawrence V. Conroy and Joan Conroy. The purpose of their visit was to attempt to, through the use of verbal abuse, coerce plaintiff into renouncing his religious affiliation with the Church, to discourage him from freely associating with other members of the Church, and to discourage him from freely discussing and exchanging his religious beliefs and ideas.

62. Defendant Judy Kimes again appeared at the home of defendants Lawrence V. Conroy and Joan Conroy, screamed at plaintiff, put up photographs of Reverend Sun Myung Moon, Adolph Hitler and Joseph Stalin and, by equating these individuals, attempted to coerce plaintiff into renouncing his religious affiliation with the Church.

63. Sometime thereafter, defendant Mary Carol Williams brought defendants Alan Tate Wood and Dee

Anderson to the home of defendants Lawrence V. Conroy and Joan Conroy. Defendants Wood and Anderson, in spite of observing the cuts and swelling upon plaintiff, refused to assist him in escaping from his confinement, and forced him to listen while they gave him lessons out of Chapter 22 of a book entitled *Thought Reform and the Psychology of Totalism* (by Robert J. Lifton). Defendants Wood and Anderson continued to force plaintiff to listen to their readings from this book for approximately five days.

64. To further ensure that plaintiff would be unable to escape from his confinement, the defendants employed defendant John Conroy and defendant Marty Berg to act as guards in the evenings.

65. On or about December 5, defendants Wood and Anderson conducted a session lasting approximately 18 hours during which numerous defendants, acting in concert, attempted to coerce plaintiff into renouncing his religious affiliation with the Church, prevented plaintiff from freely discussing and exchanging his religious beliefs and ideas, and prevented plaintiff from freely exercising his religious beliefs.

66. At the end of the session, defendant Marty Ward, as a result of plaintiff's reaction to disparaging remarks made by defendant Wood about the Church, grasped plaintiff and threatened him with violence, and when plaintiff did not resist, dropped him and told defendants Thomas James Ward and Mary Ward that plaintiff was a vegetable whose brain was ruined.

67. When defendant Wood was leaving, plaintiff again asked him to help him escape, but defendant Wood failed and refused to do so.

68. For the next ten days, defendant Anderson continued to attempt to coerce plaintiff into renouncing his religious affiliation with the Church by impressing upon him her interpretation of the Bible and through other theological discussion. During this period, in order to avoid further beatings, plaintiff feigned interest in her teachings, knowing that escape at that point was impossible.

69. During this ten day period, defendant Father Marty O'Rourke was brought to the home of defendants Lawrence V. Conroy and Joan Conroy. Although he knew that plaintiff was being held against his will, he failed and refused to assist him in obtaining his release.

70. During the ten day period, defendants Ted Morgan and Rose Morgan appeared at the home of defendants Lawrence V. Conroy and Joan Conroy. They attempted to convice him that he should renounce his religious affiliation with the Church.

71. During this ten day period, defendant Father Martin Conroy appeared at the home of defendants Lawrence V. Conroy and Joan Conroy. He attempted to coerce plaintiff into renouncing his religious affiliation with the Church and to sign a paper to the effect that plaintiff agreed to remain under his parents' control for six months. Plaintiff refused to sign the paper.

72. During this ten day period, defendant Jeff Yesline assisted the defendants in their conspiracy by occasionally acting as a guard.

73. During the time that plaintiff was held against his will at the home of defendants Lawrence V. Conroy and Joan Conroy, defendants Jack McConeghy and Betty McConeghy made numerous telephone calls to the house. The

purpose of these calls was to encourage the other conspirators to persist in their efforts to coerce plaintiff into renouncing his religious affiliation with the Church. Defendants Jack and Betty McConeghy had also participated in the conspiracy by recruiting defendant Anderson to attempt to deprogram the plaintiff and thereafter repeatedly urged defendants Thomas James Ward and Mary Ward to enlist the aid of one Ted Patrick.

74. During the time that plaintiff was confined at the home of defendants Lawrence V. Conroy and Joan Conroy, defendant Joan Conroy, in an attempt to convince plaintiff to renounce his religious affiliation with the Church, repeatedly informed plaintiff that he was insane and ought to be in a mental hospital.

75. On or about December 11, 1978, plaintiff was moved, by force, from the home of defendants Lawrence and Joan Conroy to the home of defendants John and Mary Conroy.

76. Once plaintiff had been brought to the home of defendants John and Mary Conroy, defendants Jack and Betty McConeghy made appearances at which they would bring books and attempt to convince plaintiff to renounce his affiliation with the Church. At this time, defendants Jack and Betty McConeghy knew plaintiff was being held prisoner and had seen the injuries inflicted upon him by the other conspirators.

77. Defendant Jack McConeghy, in an attempt to coerce plaintiff into renouncing his religious affiliation with the Church, told him that his brain had become atrophied as a result of brainwashing and that that was the reason plaintiff could not think for himself.

78. Defendant Marty O'Rourke came to the home of defendants John and Mary Conroy approximately ten

times during the period that plaintiff was held prisoner at that location, each time attempting to convince plaintiff to extend his involuntary stay at the home of defendants John and Mary Conroy.

79. During the period that plaintiff was held prisoner at the home of defendants John and Mary Conroy, defendant Jo Munchouer came each day, was aware of the fact that plaintiff was being held against his wishes, and warned defendants Thomas James Ward and Mary Ward against allowing plaintiff to go to school as that would enable him to escape.

80. During the time that plaintiff was confined against his will at the home of defendants John and Mary Conroy, Theodore and Anna Glatz, David Conroy and defendant Sister Maria Victoria appeared at the house. All of these people, including Sister Maria Victoria, knew that plaintiff was being held involuntarily, observed the injuries he had sustained, knew that he was being held in an attempt to force him to renounce his religious affiliation with the Church, and failed and refused to take any action to assist him in escaping from his involuntary confinement.

81. During the period of plaintiff's confinement at the homes of defendants Lawrence V. and Joan Conroy and John and Mary Conroy, defendant Eugenia Mandelkorn telephoned on numerous occasions, including at least one call nearly every day, to monitor the progress of the conspiracy.

82. During the time of plaintiff's involuntary confinement, defendant Mary Ward, on several occasions, in an attempt to coerce plaintiff into renouncing his religious affiliation with the Church, informed him that she would rather he be dead than in the Church and that she would kill him rather than allow him to go back. This threat was

reinforced by defendant Joan Conroy, who several times told plaintiff that defendant Mary Ward was serious.

83. To coerce plaintiff into renouncing his religious affiliation with the church, defendant Mary Ward threatened to force him to sign either a statement renouncing the Church or renouncing her and defendant Thomas James Ward. Defendant Mary Ward further threatened that if he chose to sign the statement renouncing her and defendant Thomas James Ward, that she would kill plaintiff and defendant Thomas James Ward, write a release to the *Pittsburgh Press* to the effect that the Church had caused a "Jonestown" to occur in her own home, and that she would then commit suicide.

84. On or about December 18, numerous defendants coerced plaintiff into writing a letter to his wife, Heidi Ward, to the effect that he would need time to reassess his thoughts about the Church and would contact her in a few weeks about the amount of time needed. To force plaintiff to write the letter, defendant Joan Conroy repeated to plaintiff the threat of defendant Mary Ward to kill him, defendant Thomas James Ward and herself unless such a letter were written.

85. To prevent defendant Mary Ward from killing him, defendant Thomas James Ward and herself, a possibility which, in light of the unstable psychiatric history of defendant Mary Ward plaintiff was unable to dismiss, plaintiff proposed to defendant Mary Ward that he be given his freedom in exchange for his agreement to stay at home for six months and read about the Church and restudy his position. He further proposed that he be permitted to get a job for the six months while he thought things out.

86. On December 28, 1978, plaintiff was allowed by defendants to go job hunting, with defendant Marty Ward being assigned to accompany him and keep him under guard. When they arrived at a hotel at which plaintiff was to apply for a job, plaintiff convinced defendant Marty Ward that he should be allowed to enter alone. When defendant Marty Ward agreed, plaintiff was able to effect an escape. At this time, plaintiff had been involuntarily confined for a period of approximately 35 days.

87. Plaintiff lives in constant fear and apprehension that he will once again be subjected to the ordeals and wrongful conduct complained of herein. Unless plaintiff is granted the relief herein requested, he will continue to be subjected to such fear and apprehension, will again be abducted and assaulted, and will continue to be denied the equal protection of the laws and the enjoyment of his rights, privileges and immunities as citizen of the United States.

88. Plaintiff has no adequate remedy at law.

89. The conduct of defendants is a wrongful violation of the Civil Rights Act, 42 U.S.C. § 1985(3).

PRAYER FOR RELIEF

WHEREFORE, plaintiff respectfully prays:

(a) that the Court enter judgment in his favor and against defendants Thomas James Ward, Mary Ward, Marty Ward, Maureen Ward, Lawrence V. Conroy, Joan Conroy, John Conroy, Mary Conroy, Mary Carol Williams, Father Martin Conroy and Sister Maria Victoria enjoining and restraining them, *pendente lite* and permanently, from

conspiring to and/or doing any act the purpose of which is to deprive plaintiff of his civil rights guaranteed by the First Amendment to the Constitution of the United States;

(b) that the Court enter judgment in his favor and against defendants Ken Connor, Sr., Arlene Doe, Ken Connor, Jr., Phil Doe, John Doe, Robert S. Mandelkorn, Eugenia Mandelkorn, Richard Roe, Mary Roe, Lyle Mosier, Judy Kimes, Reverend Dean, Alan Tate Wood, Dee Anderson, Marty Berg, Father Marty O'Rourke, Ted Morgan, Rose Morgan, Jeff Yesline, Jack McConeghy, Betty McConeghy and Jo Munchouer, jointly and severally, (i) awarding the plaintiff compensatory damages in an amount not less than five million dollars, ($5,000,000.00), (ii) awarding plaintiff punitive damages in the amount of ten million dollars ($10,000,000.00), and (iii) interest from the date of judgment, attorneys fees incurred in bringing this lawsuit, and costs of suit.

COUNT II
(Statutory Conspiracy)

90. Plaintiff hereby incorporates the allegations of paragraphs 1-4, 8-15, 18, 19, 21-25, 27-29 and 31-89 as if the same were here set forth verbatim.

91. On or about November 27, 1978, as a further act in furtherance of the conspiracy, Ken Connor, Sr., Arlene Doe, Ken Connor, Jr., Phil Doe, John Doe, Robert S. Mandelkorn, Eugenia Mandelkorn, Richard Roe, Mary Roe, Lyle Mosier, and other unknown defendants caused

injury to the reputation of the plaintiff by making certain representations in an attempt to obtain a conservatorship order over the person of the plaintiff, which representations the aforementioned defendants knew or had reason to know were untrue and which representations said defendants knew would cause damage to the reputation of plaintiff, including a representation that plaintiff was not of sound mind.

92. The aforementioned facts constitute a violation of § 18.2-499-500 of the Code of Virginia 1950, as amended.

PRAYER FOR RELIEF

WHEREFORE, the plaintiff respectfully prays that the Court enter judgment in his favor against the defendants named in paragraph 91, jointly and severally:

(a) awarding to the plaintiff compensatory damages in amount not less than five millions dollars ($5,000,000.00);

(b) awarding to the plaintiff punitive damages in the amount of fifteen million dollars ($15,000,000.00); and

(c) awarding to the plaintiff interest from the date of judgment, attorneys fees incurred in bringing this lawsuit, and costs of suit.

COUNT III
(Assault)

93. Plaintiff herein incorporates the allegations of paragraphs 1-4, 8-15, 18, 19, 21-25, 27-29 and 31-92 as if the same were here set forth verbatim.

94. As acts in furtherance of the conspiracy, Ken Connor, Sr., Arlene Doe, Ken Connor, Jr., Phil Doe, John Doe, Robert S. Mandelkorn, Eugenia Mandelkorn, Richard Roe, Mary Roe, Lyle Mosier, Judy Kimes, Reverend Dean, Alan Tate Wood, Dee Anderson, Marty Berg, Father Marty O'Rourke, Ted Morgan, Rose Morgan, Jeff Yesline, Jack McConeghy, Betty McConeghy, Jo Munchouer, and other unknown defendants caused plaintiff, upon several occasions, to be put in reasonable fear of an imminent and offensive contact from a member of the conspiracy, each of which caused a mental disturbance of plaintiff's personal integrity. These acts included:

(a) informing plaintiff that at any time he refused to cooperate in the unlawful conduct of the conspirators he would be struck in a painful and hurtful manner;

(b) informing plaintiff that if he did not sign a certain document he would be killed; and,

(c) making gestures with clenched fists which caused plaintiff to fear that he would be painfully and offensively struck at any moment.

95. The conduct of defendants described above was done maliciously in a setting in which plaintiff was at all times surrounded by a large number of individuals each of whom had manifested hostility toward the plaintiff. This conduct put the plaintiff in a position where he had a reasonable belief that his personal integrity was about to be interfered with and constituted the tort of assault.

PRAYER FOR RELIEF

WHEREFORE, the plaintiff respectfully prays that the Court enter judgment in his favor against the defendants

named in paragraph 94, jointly and severally:

(a) awarding to the plaintiff compensatory damages in an amount not less than one million dollars ($1,000,000.00);

(b) awarding to the plaintiff punitive damages in the amount of two million dollars ($2,000,000.00); and,

(c) awarding to the plaintiff interest from the date of judgment, attorneys fees incurred in bringing this lawsuit, and costs of suit.

COUNT IV
(Battery)

96. Plaintiff herein incorporates the allegations of paragraphs 1-4, 8-15, 18, 19, 21-25, 27-29 and 31-95 as if the same were set forth verbatim.

97. Ken Connor, Sr., Arlene Doe, Ken Connor, Jr., Phil Doe, John Doe, Robert S. Mandelkorn, Eugenia Mandelkorn, Richard Roe, Mary Roe, Lyle Mosier, Judy Kimes, Reverend Dean, Alan Tate Wood, Dee Anderson, Marty Berg, Father Marty O'Rourke, Ted Morgan, Rose Morgan, Jeff Yesline, Jack McConeghy, Betty McConeghy, Jo Munchouer, and other unknown defendants, did strike and/or cause others to strike and/or unlawfuly touch the plaintiff.

98. The conduct described above was malicious, in violation of the plaintiff's rights and of the laws of the Commonwealths of Virginia and Pennsylvania and constitutes the tort of battery.

PRAYER FOR RELIEF

WHEREFORE, the plaintiff respectfully prays that the Court enter judgment in his favor against the defendants named in paragraph 97, jointly and severally:

(a) awarding to the plaintiff compensatory damages in an amount not less than one million dollars ($1,000,000.00);

(b) awarding to the plaintiff punitive damages in the amount of two million dollars ($2,000,000.00); and,

(c) awarding to the plaintiff interest from the date of judgment, attorneys fees incurred in bringing this lawsuit, and costs of suit.

COUNT V
(False Imprisonment)

99. Plaintiff herein incorporates the allegations of paragraphs 1-4, 8-15, 18, 19, 21-25, 27-29 and 31-98 as if the same were set forth verbatim.

100. Ken Connor, Sr., Arlene Doe, Ken Connor, Jr., Phil Doe, John Doe, Robert S. Mandelkorn, Eugenia Mandelkorn, Richard Roe, Mary Roe, Lyle Mosier, Judy Kimes, Reverend Dean, Alan Tate Wood, Dee Anderson, Marty Berg, Father Marty O'Rourke, Ted Morgan, Rose Morgan, Jeff Yesline, Jack McConeghy, Betty McConeghy, Jo Munchouer, and other unknown defendants, did seize and hold the plaintiff against his will and refused, in spite of repeated demands, to free him.

101. The conduct described above was malicious and in violation of the laws of the Commonwealths of Virginia

and Pennsylvania and constitutes the tort of false imprisonment.

PRAYER FOR RELIEF

WHEREFORE, the plaintiff respectfully prays that the Court enter judgment in his favor against the defendants named in paragraph 100, jointly and severally:

(a) awarding to the plaintiff compensatory damages in an amount not less than one million dollars ($1,000,000.00);

(b) awarding to the plaintiff punitive damages in the amount of two milion dollars ($2,000,000.00); and,

(c) awarding to the plaintiff interest from the date of judgment, attorneys fees incurred in bringing this lawsuit, and costs of suit.

COUNT VI
(Invasion of Privacy)

102. Plaintiff herein incorporates the allegations of paragraphs 1-4, 8-15, 18, 19, 21-25, 27-29 and 31-101 as if the same were set forth verbatim.

103. Ken Connor, Sr., Arlene Doe, Ken Connor, Jr., Phil Doe, John Doe, Robert S. Mandelkorn, Eugenia Mandelkorn, Richard Roe, Mary Roe, Lyle Mosier, Judy Kimes, Reverend Dean, Alan Tate Wood, Dee Anderson, Marty Berg, Father Marty O'Rourke, Ted Morgan, Rose Morgan, Jeff Yesline, Jack McConeghy, Betty McConeghy, Jo Munchouer, and other unknown defendants, did, by their actions, invade the privacy of the plaintiff.

104. This conduct was malicious, in violation of the rights of the plaintiff and of the laws of the Commonwealths of Virginia and Pennsylvania and constitutes the tort of invasion of privacy.

PRAYER FOR RELIEF

WHEREFORE, the plaintiff respectfully prays that the Court enter judgment in his favor against the defendants named in paragraph 103, jointly and severally:

(a) awarding to the plaintiff compensatory damages in an amount not less than one million dollars ($1,000,000.00);

(b) awarding to the plaintiff punitive damages in the amount of two million dollars ($2,000,000.00); and,

(c) awarding to the plaintiff interest from the date of judgment, attorneys fees incurred in bringing this lawsuit, and costs of suit.

COUNT VII
(Intentional Infliction of Emotional Distress)

105. Plaintiff herein incorporates the allegations of paragraphs 1-4, 8-15, 18, 19, 21-25, 27-29 and 31-104 as if the same were set forth verbatim.

106. Ken Connor, Sr., Arlene Doe, Ken Connor, Jr., Phil Doe, John Doe, Robert S. Mandelkorn, Eugenia Mandelkorn, Richard Roe, Mary Roe, Lyle Mosier, Judy Kimes, Reverend Dean, Alan Tate Wood, Dee Anderson, Marty Berg, Father Marty O'Rourke, Ted Morgan, Rose Morgan, Jeff Yesline, Jack McConeghy, Betty Mc-

Coneghy, Jo Munchouer, and other unknown defendants' conduct described above was extreme, outrageous and utterly intolerable in a civilized society. By such conduct the named defendants conspired to and did intentionally cause severe emotional distress to the plaintiff.

107. This conduct was malicious , in violation of the rights of the plaintiff and of the laws of the Commonwealths of Virginia and Pennsylvania, and constitutes the tort of intentional infliction of severe emotional distress.

PRAYER FOR RELIEF

WHEREFORE, the plaintiff respectfully prays that the Court enter judgment in his favor against the defendants named in paragraph 106, jointly and severally:

(a) awarding to the plaintiff compensatory damages in an amount not less than one million dollars ($1,000,000.00);

(b) awarding to the plaintiff punitive damages in the amount of two million dollars ($2,000,000.00); and,

(c) awarding to the plaintiff interest from the date of judgment, attorneys fees incurred in bringing this lawsuit, and costs of suit.

COUNT VIII
(Grand Larceny)

108. Plaintiff herein incorporates the allegations of paragraphs 1-4, 8-15, 18, 19, 21-25, 27-29 and 31-107 as if the same were set forth verbatim.

109. Ken Connor, Sr., Arlene Doe, Ken Connor, Jr., Phil Doe, John Doe, Robert S. Mandelkorn, Eugenia Mandelkorn, Richard Roe, Mary Roe, Lyle Mosier, Judy Kimes, Reverend Dean, Alan Tate Wood, Dee Anderson, Marty Berg, Father Marty O'Rourke, Ted Morgan, Rose Morgan, Jeff Yesline, Jack McConeghy, Betty McConeghy, Jo Munchouer, and other unknown defendants, did take and steal from the plaintiff personal property and money described herein above in a value exceeding $100.00, that the named defendants have withheld these items from the plaintiff and have converted them for their own use.

110. That this conduct was malicious, in violation of the rights of the plaintiff and of the laws of the Commonwealths of Virginia and Pennsylvania and constitutes the tort of grand larceny.

PRAYER FOR RELIEF

WHEREFORE, the plaintiff respectfully prays that the Court enter judgment in his favor against the defendants named in paragraph 109, jointly and severally:

(a) the return of the property previously taken from him;

(b) awarding to the plaintiff punitive damages in the amount of one million dollars ($1,000,000.00); and,

(c) awarding to the plaintiff interest from the date of judgment, attorneys fees incurred in bringing this lawsuit, and costs of suit.

WHEREFORE, the plaintiff prays for a judgment as set forth with particularity under each count hereinabove,

together with interest as provided by law, the costs of this action, reasonable attorneys fees as provided by 42 U.S.C. § 1988, and any further relief which the Court may deem just and proper.

Respectfully submitted,

/s/

John E. Harrison

/s/

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